

71-26,943

SMITH, Michael Robert, 1939-

THE LEGALITY OF USING PUBLIC FUNDS FOR  
RELIGIOUS SCHOOLS AS INTERPRETED BY FEDERAL  
COURT DECISIONS.

University of North Carolina at Greensboro,

Ed.D., 1971

Education, religion

University Microfilms, A XEROX Company, Ann Arbor, Michigan

© 1971

MICHAEL ROBERT SMITH

ALL RIGHTS RESERVED

THE LEGALITY OF USING PUBLIC FUNDS FOR  
RELIGIOUS SCHOOLS AS INTERPRETED  
BY FEDERAL COURT DECISIONS

by

Michael Robert Smith

A Dissertation Submitted to  
the Faculty of the Graduate School at  
The University of North Carolina at Greensboro  
in Partial Fulfillment  
of the Requirements for the Degree  
Doctor of Education

Greensboro  
February, 1971

Approved by

  
Dissertation Adviser

## APPROVAL SHEET

This dissertation has been approved by the following committee  
of the Faculty of the Graduate School at The University of North Carolina  
at Greensboro.

Dissertation  
Adviser

Joseph M. Cook

Oral Examination  
Committee Members

Joseph E. Bryson

Robert L. Lusk

Bert H. Gold

George P. Grill

March 12, 1971  
Date of Examination

SMITH, MICHAEL ROBERT. The Legality of Using Public Funds for Religious Schools as Interpreted by Federal Court Decisions. (1971)  
Directed by: Dr. Thomas Joseph McCook. pp. 388

The purpose of the study was to determine, as far as possible, the legality of using public tax funds for the support of religious elementary and secondary schools in the fifty United States of America through the perusal and analysis of: historical relationships between selected religions and governments, certain constitutional and statutory provisions, and, in particular, pertinent federal court decisions.

The study is factual in its presentation; it deals with a legal question, and no attempt was made to relate it to social or economic factors. The writer sought to present an orderly arrangement of legal principles, and state and federal documents relating to the study.

Data for each chapter were obtained by a variety of methods, each unique to the particular chapter. The introduction to Chapter I resulted from a review of the literature. Chapter II involved historical research derived from pertinent books, encyclopedias, and historical documents. The research for that chapter was guided mainly by judicial references to earlier periods, included in the various court cases. The case of Horace Mann League v. Board of Public Works, 242 Md. 645 (1966) was particularly instrumental. Chapter III entailed a thorough study of both the federal and state constitutional and statutory provisions related to the separation of church and state. All provisions were included in Appendix B for Chapter III. In Chapter IV a cover letter and data sheet were mailed to



the attorneys general of each state. The cover letter explained the writer's task and solicited the assistance of the reader. The data sheet, in ten separate questions, asked for the codes to the state's laws (if any) which provide all types of public assistance to elementary and secondary parochial schools or parochial school students. Thirty-four responses were received from the attorneys general; whereupon letters and data sheets were mailed to the state superintendents of public instruction in the remaining 16 states. When all of those 16 states replied, the overall response was 100 percent. The codes to the state laws were compiled, and all statutes were researched in the law library at The University of North Carolina at Chapel Hill. Also in Chapter IV, the United States Public Laws were researched for acts which provide federal assistance to parochial elementary and secondary schools or school students. The state and federal provisions were included in Appendix C for Chapter IV. In Chapter V, with the assistance of the American Digest System, National Reporter System, American Law Reports, Corpus Juris Secundum, and other legal indexes, a complete listing of all federal court cases involving the use of public funds for the support of religious schools or religious activities in public schools was secured. Each case was thoroughly read with a view toward its relationship to the study, and if relevant, reported in Chapter V.

Based on the factual data set forth in the study, fourteen separate conclusions were deduced. The salient conclusions among the list were: (a) the child is not merely the "creature of the state"--the parent has the right and high duty to determine the educational direction of his child; (b) since Roman Catholic bishops declared under canon law 1374 that Catholic parents, under penalty of sin, must send their children to

Catholic schools, unless excused from this obligation by their bishop, it should not be said that Catholic parents only follow their personal consciences in this matter; (c) it is proper for the court to investigate the character and environment under which education is conducted in a state supported religious school, if that same investigation is proper in a public school; (d) under our law which mandates a secular public school system, it would be anomalous for the law to support secular teaching in a parochial school where religious teaching is conducted in that same school; (e) the federal Constitution requires that laws neither "advance or inhibit" religion; (f) where a statute fosters "excessive entanglement" between government and religion, the First Amendment is violated; (g) if the law financially supports secular teaching in a parochial school, but fails to guarantee the secularity of that teaching, it may establish a religion; if the secularity of that teaching is guaranteed, the law will become "excessively entangled" with religion, and violate the free exercise thereof; (h) the direct use of public funds for religious schools is a violation of the Constitution of the United States of America.

## ACKNOWLEDGMENTS

The writer wishes to express his appreciation to Dr. T. Joseph McCook for the helpful criticism and encouragement rendered during the process of this study. Other persons of assistance were Dr. Bert A. Goldman, Dr. George P. Grill, and Dr. Joseph E. Bryson.

The writer also wishes to acknowledge a special debt of gratitude to Dr. Joseph E. Bryson. As an individual, as well as a great teacher, this man has instilled in the writer two indispensable qualities: a predilection for learning, and a high respect for the worth and dignity of other people.

To his wife, Judee, the writer dedicates this study.

## TABLE OF CONTENTS

CHAPTER	PAGE
I. INTRODUCTION . . . . .	1
Purpose of the Study . . . . .	15
Method of Procedure . . . . .	15
Limitations of the Study . . . . .	17
Definition of Terms . . . . .	17
Plan of Study. . . . .	18
II. THE PHILOSOPHICAL AND HISTORICAL RELATIONSHIP BETWEEN	
SELECTED RELIGIONS AND GOVERNMENTS . . . . .	21
Until America . . . . .	21
America . . . . .	36
America: The Church and State School Question . . . . .	43
III. FEDERAL AND STATE PROVISIONS FOR THE SEPARATION OF	
CHURCH AND STATE . . . . .	52
Federal Provisions . . . . .	52
State Provisions . . . . .	55
IV. A STUDY OF FEDERAL AND STATE CONSTITUTIONAL AND	
STATUTORY PROVISIONS PERMITTING THE USE OF PUBLIC	
FUNDS FOR RELIGIOUS SCHOOLS . . . . .	72
Federal Aid to Parochial Schools . . . . .	72
National School Lunch Act of 1946 . . . . .	74
Federal Property and Administrative Services	
Act of 1949 . . . . .	74

CHAPTER	PAGE
Agriculture Act of 1954 . . . . .	74
National Defense Education Act of 1958 . . . . .	75
Economic Opportunity Act of 1964 . . . . .	75
Elementary and Secondary Education Act of 1965 . . . . .	76
Higher Education Act of 1965 . . . . .	77
Veteran's Readjustment Benefits Act of 1966 . . . . .	78
Child Nutrition Act of 1966 . . . . .	78
State Aid to Parochial Schools . . . . .	78
Purchase of secular educational services laws . . . . .	80
Other direct aid laws . . . . .	84
Shared-time and driver education laws . . . . .	85
Transportation and textbooks . . . . .	87
Lunches and health services . . . . .	90
Miscellaneous assistance . . . . .	92
V. AN ANALYSIS OF FEDERAL COURT DECISIONS RELATIVE TO THE	
LEGALITY OF USING PUBLIC FUNDS FOR RELIGIOUS SCHOOLS . . .	95
A Preface to the Cases . . . . .	95
The Cases . . . . .	98
<u>Bradfield v. Roberts</u> . . . . .	98
<u>Quick Bear v. Leupp</u> . . . . .	100
<u>Meyer v. Nebraska</u> . . . . .	102
<u>Frothingham v. Mellon</u> . . . . .	103
<u>Pierce v. Society of Sisters</u> . . . . .	105
<u>Cochran v. Louisiana State Board of Education</u> . . . . .	106

CHAPTER	PAGE
<u>Cantwell v. Connecticut</u> . . . . .	107
<u>Everson v. Board of Education</u> . . . . .	109
<u>McCullum v. Board of Education</u> . . . . .	111
<u>Zorach v. Clausen</u> . . . . .	112
<u>Engel v. Vitale</u> . . . . .	114
<u>Abington School District v. Schempp</u> . . . . .	115
<u>Board of Education v. Allen</u> . . . . .	117
<u>Flast v. Cohen</u> . . . . .	119
<u>Lemon v. Kurtzman</u> . . . . .	121
<u>DiCenso v. Robinson</u> . . . . .	123
<u>Johnson v. Sanders</u> . . . . .	127
VI. SUMMARY AND CONCLUSIONS . . . . .	130
Summary . . . . .	130
Conclusions . . . . .	140
BIBLIOGRAPHY . . . . .	142
APPENDICES . . . . .	154
Appendix A for Chapter II . . . . .	155
Appendix B for Chapter III . . . . .	161
Appendix C for Chapter IV . . . . .	239
Appendix D for Chapter V . . . . .	377

## LIST OF TABLES

TABLE		PAGE
I.	States With Preambles; Which Preambles Invoke God's Favor or Express Gratitude . . . . .	57
II.	State Prohibitions Against Religious Tests as Qualifications for: Holding a Public Office, Being a Witness, and Being Admitted to a Public School . . . . .	61
III.	State Prohibitions Against Interference With Freedom of Worship or Conscience . . . . .	63
IV.	State Prohibitions Against Requiring Church Attendance and Against the Establishment of Religion . . . . .	65
V.	State Prohibitions Against Requiring Support for Religious or Sectarian Institutions and Religious or Sectarian Schools . . . . .	68
VI.	Federal Acts and Types of Assistance to Elementary and Secondary Religious Schools . . . . .	79
VII.	States With Purchase of Secular Educational Services Laws and Other Direct Aid Laws . . . . .	81
VIII.	States Which Make Shared-Time or Driver Education Available to Elementary and/or Secondary Parochial Schools . . . . .	86
IX.	States Which Make Transportation and/or Textbooks Available to Elementary and/or Secondary Parochial Schools . . . . .	88

TABLE	PAGE
X. States Which Make Lunches and/or Health Services Available to Elementary and/or Secondary Parochial Schools . . . . .	91
XI. All States With Respective Types of Assistance to Elementary and Secondary Parochial Schools . . . . .	93



## CHAPTER I

### INTRODUCTION

## CHAPTER I

## INTRODUCTION

"Put away your gods and come and worship ours or we will kill you and your gods!"<sup>1</sup> Shades of sentiment behind Dostoyevsky's exclamation affected greatly the character of both public and religious schools in America. "At the time of the adoption of the Federal Constitution, nine of the American states had established churches, with several denominations represented."<sup>2</sup> The schools of the time were denominational in character, and the lines of demarcation were not always clear. In certain instances ". . . public funds and other forms of public aid were turned over to private agencies and religious groups for the support of nonpublic education."<sup>3</sup> But the need for education was so great that there was very little strife between the denominations. "People were only too happy to have any kind of school established that would provide young people with the elements of learning."<sup>4</sup> However, the enjoyment of such harmony was not lasting: "Immigration as well as schisms in established denomina-

---

<sup>1</sup>Fyodor Dostoyevsky, The Brothers Karamazov (New York: Random House, 1950), p. 301.

<sup>2</sup>Peter H. Rossi and Alice S. Rossi, "Some Effects of Parochial School Education in America," in Society and Education: A Book of Readings, (ed.) by Robert J. Havighurst, Bernice L. Neugarten, and Jacqueline M. Falk, (Boston: Allyn, Inc., 1967), p. 204.

<sup>3</sup>Ronald F. Campbell, et al., The Organization and Control of American Schools (Columbus, Ohio: Charles E. Merrill Publishing Company, 1970), p. 528.

<sup>4</sup>Mary Perkins Ryan, Are Parochial Schools the Answer? (New York: Holt, Rinehart & Winston, Inc., 1964), p. 32.

tions brought about a proliferation of sects, so that by 1840 the separation of church and state had taken place in every state within the Union."<sup>5</sup> And concern over the religious complexion of the schools mounted in direct proportion to the arrival of large numbers of Irish and German Catholics. Indeed, many feared the possibility of a papist alliance with European Catholic monarchies to conquer the country and subject it to ecclesiastic rule. Samuel F. B. Morse warned ". . .that there is good reason for believing that the despots of Europe are attempting, by the spread of Popery in this country, to subvert its free institutions. . . ."<sup>6</sup>

Such an atmosphere made it quite natural for educational statesmen of the times to advocate nondenominational schools:

The first moves in the direction of secular public education, made in Massachusetts toward the middle of the last century, stemmed from Horace Mann's desire to eliminate from the schools the contradictions between different Protestant tenets and to substitute a kind of ethical culture with biblical overtones.<sup>7</sup>

"While Mann favored the presence of religious instruction in the schools, he insisted that it include only that body of Christian beliefs which did violence to no one's conscience."<sup>8</sup> Mann declared that it was the duty of the school ". . .to give to all so much religious instruction as is compatible with the rights of others and with the genius of our

---

<sup>5</sup>Rossi, op. cit., p. 205.

<sup>6</sup>Samuel F. B. Morse, Foreign Conspiracy Against the Liberties of the United States (New York: Leavitt, Lord and Company, 1835), p. 51.

<sup>7</sup>Ryan, op. cit., p. 33.

<sup>8</sup>Vincent P. Lannie, Public Money and Parochial Education (Cleveland: The Press of Case Western Reserve University, 1968), p. 2.

government."<sup>9</sup> But Mann did not stand alone: in 1837, Samuel Lewis, the first superintendent of the common schools of Ohio, supported nondenominationalism in his First Annual Report to the Legislature; and Reverend Bushnell of New York published an article saying that "to insist that the state shall teach the rival opinions of sects and risk the loss of all instruction for that would be folly and wickedness together."<sup>10</sup>

By 1840 the nondenominational approach was generally embraced in the common schools, and if this did not entirely satisfy the Protestant sects, it was not intolerable. The King James version of the Bible was read without comment in the schools. New York City's Board of Education ruled in 1844 ". . . that the Bible without note or comment, at the opening of the schools is not inculcating or practising any religious or sectarian doctrine or tenet of any particular Christian or other religious sect."<sup>11</sup> Protestants could supply their own views and indoctrinate, without fear of a loss of the faithful, in a system of Sunday schools. But what was tolerable to the Protestant sects was anathema to the Catholics. The King James version of the Bible was not sanctioned by the Catholic Church, and, therefore, could not represent the word of God. Furthermore, reading of the Bible without comment meant that private interpretation was necessary. Catholics rejected this--the practice smacked of sectarianism since Catholics believe that the Church alone has the right to interpret the Bible. These two unsatisfactory conditions within the public schools led the

---

<sup>9</sup>Neil G. McCluskey, Catholic Education in America: A Documentary History (New York: Columbia University Press, 1964), p. 6.

<sup>10</sup>Lannie, op. cit., p. 3.

<sup>11</sup>Ibid., p. 252.

Catholics to a dilemma. Either they could leave their children in the public schools and jeopardize their faith, or they could provide their own schools. If they made the latter choice, they faced the prodigious tasks of securing funds and personnel for their schools.

"By 1840 there were 200 Catholic schools in the country as a whole."<sup>12</sup> But this was not nearly enough to instruct all Catholic children. In Lowell, Massachusetts, ". . .provision was made for a time for 'Irish' schools, which Catholic children only attended, to be taught by Catholic teachers."<sup>13</sup> The schools were publicly supported; nevertheless, Catholics had the right to use the buildings for religious exercises. But where sympathy for the Catholic predicament was absent the bishops concentrated their efforts toward neutralizing the public schools in order to make them more palatable for Catholic students.<sup>14</sup> After realizing the futility of their efforts, the bishops met in Baltimore and called for a ". . .separate system of education for the children of our communion."<sup>15</sup> This policy, however, still left the question of how to finance the schools. In Europe, tax credits were granted to reduce the burden on parents of parochial school children. Therefore, it was natural for the Catholics to look to the state in America.

The first significant battle for parochial aid was waged in New York City during the early years of the 1840's. The campaign was conducted under the leadership of Bishop John Hughes. At the time, 20,000

---

<sup>12</sup>Reginald A. Neuwien (ed.), Catholic Schools in Action, A Notre Dame University Study of Catholic Elementary and Secondary Schools in the United States, (Indiana: University of Notre Dame Press, 1966), p. 3.

<sup>13</sup>Ibid., p. 6. <sup>14</sup>Lannie, op. cit., p. 6. <sup>15</sup>Ibid.

children, primarily Catholic, failed to attend the public schools because of religious objections. Recognizing the seriousness of the situation, Governor Seward urged the reorganization of New York City's school system. Under Seward's plan:

. . .the existing Catholic schools would become part of the state's common school system--Catholic public schools--even though they retained their private charters and religious affiliation. Public funds would thus be appropriated to finance denominational schools which Catholic children could attend without violating their religious convictions.<sup>16</sup>

It seems doubtful that Seward saw any constitutional objections to his proposal. In any event, Catholic leaders wasted little time before petitioning the city's Common Council for a share of the common school fund. Briefly the petition emphasized that the existing Catholic schools within the city--all supported by the congregations--would collapse unless they received financial relief. In addition, the petitioners argued that they also contributed through taxes to the common school fund; therefore, they were entitled to a pro rata share. Almost immediately, two other sects, one Jewish and one Presbyterian, set forth their claims:

If your Honorable Body shall determine to grant their (Catholic) request, and thus establish the principle that this fund, though raised by general tax, may be appropriated to church or sectarian schools, then your memorialists respectfully but earnestly contend, that they are entitled to a rateable portion thereof. . . .<sup>17</sup>

Strong opposition was advanced by New York's Public School Society; indeed, the Society set forth an argument which Bishop Hughes never effectively answered. Earlier Hughes had indicated that should Catholic schools be granted public funds, the schools would naturally exclude

---

<sup>16</sup>Ibid., p. 21.    <sup>17</sup>Ibid., p. 33.

religious exercises from the regular school day. Now the Society countered that the elimination of religion would make the Catholic and public schools one and the same and that the need for Catholic schools would be cancelled.

A three-man committee was set up to study the issue and to make recommendations to New York City's Board of Assistant Aldermen. After hearing the arguments of the Public School Society and assessing the recommendations of the committee, the Board rejected the Catholics' request, saying that no incorporated religious society had a valid claim for participation in the common school fund. The committee's answer to Catholic claims was sophisticated and weighs heavily yet. The report argued that Catholics:

. . .are taxed not as members of the Roman Catholic Church, but as citizens of the State of New York; and not for the purposes of religion, but for the support of civil government. . . . Admit the correctness of the (Catholic) claim, that the Common Council of the City, or the Legislature of the State, may rightfully appropriate the Public Money to the purposes of religious instruction of any kind, in any school, and the consequence will be, that the People may be taxed by law, for the support of some one or other of our numerous religious denominations. . . . By granting a portion of the School Fund to one sect, to the exclusion of others, a 'preference' is at once created, a 'discrimination' is made, and the object of this great Constitutional guarantee is defeated. . . .<sup>18</sup>

Failing in his efforts to secure public funds, Hughes turned his back on the politicians, but he was now all the more convinced of the necessity for a separate school system. "Let parochial schools be established and maintained everywhere. . . proceed upon the principle that, in this age and country, the school is before the church."<sup>19</sup> Hughes was

---

<sup>18</sup>Ibid., pp. 47-48.    <sup>19</sup>Ibid., p. 256.

calling for voluntary efforts; he had no way of knowing that within 40 years commitment to a separate system of parochial schools would be official Church policy. In 1884, the Third Plenary Council of Baltimore made it the duty of priests and bishops to erect and maintain Catholic schools, and of parents to educate their children in them.

In order to carry out this directive, various attempts were made to secure state support.

One of these was the 'Poughkeepsie plan,' under which the local board of education leased the parochial school buildings from the parish, maintained the buildings, paid the teachers, and had the right of inspection and control. This plan was in operation for some time, but was finally blocked by a school superintendent who objected to the religious habit worn by the teaching Sisters.<sup>20</sup>

A similar plan of reimbursement was adopted in the towns of Stillwater and Faribault, Minnesota. Here the state claimed the right to control the educational process in the Catholic schools, and the subsequent controversy forced the abandonment of those arrangements.

Despite the lack of success in securing public support, Catholic schools grew to where in 1900 ". . . some 5 per cent of the elementary and secondary school students in the country were in Catholic schools. By 1940 the proportion had risen to 7 per cent, (and) in the last twenty-five years the percentage had doubled. . . ."<sup>21</sup> During those years the main sources for financing the Catholic schools were ". . . parish support, diocesan support, tuition, fees, contributed services of religious and lay

---

<sup>20</sup>Ryan, op. cit., p. 34.

<sup>21</sup>Andrew M. Greeley and Peter H. Rossi, The Education of Catholic Americans (Chicago: Aldine Publishing Company, 1966), p. 2.



school staff, and fund raising."<sup>22</sup> Perhaps it is ironic that the absence of one of the prime sources of support for Catholic schools--the relatively inexpensive services of teachers--is now leading directly to their demise.

Over the past thirty years fewer Catholic men and women have entered teaching orders, and large numbers have returned to lay life.<sup>23</sup> This decrease has meant the addition of increasing numbers of lay teachers. Between 1957 and 1967 ". . . 52,000 new lay teachers were added--a 168% increase."<sup>24</sup> Though by 1967 only two percent of lay teachers in Catholic elementary schools received over \$4500 annually, and only 28 percent of lay Catholic high school teachers received over \$5000 annually, the differences between their salaries and the traditionally free services of religious teachers represent significant increased costs.<sup>25</sup>

In addition to the increased instructional costs are the added costs of improved educational services. As the public schools make improvements, Catholic schools must follow or risk the loss of support from Catholic parents.

The Catholic schools are caught in a vicious cycle. Failure to attempt to keep abreast with educational changes and parental aspirations for quality education undermines the voluntary financial support to the schools. On the other hand, meeting such legitimate demands increases costs which

---

<sup>22</sup>James Michael Lee (ed.), Catholic Education in the Western World (South Bend, Indiana: University of Notre Dame Press, 1967), p. 279.

<sup>23</sup>Andre L. Daniere and George F. Madaus, The Measurement of Alternative Costs of Educating Catholic School Children in Public Schools, (unpublished report prepared by the Massachusetts Advisory Council on Education, March, 1969).

<sup>24</sup>Benton Patterson, "What's Behind the Shutdowns--and What's Ahead," School Management, XIII (April, 1969), p. 47.

<sup>25</sup>Lee, op. cit., p. 280.

must be met by tuition or further parish or diocesan expenditures. This in turn adversely affects parents and parishes least able to afford increases in costs.<sup>26</sup>

Mary Perkins Ryan recognized the problem in 1963: ". . .it will soon be practically impossible for unaided Catholic efforts to continue to handle the proportion of Catholic young people now being served."<sup>27</sup> In addition to a recognition of the financial plight of the schools, Mrs. Ryan steered the Catholic educational world toward thinking about whether parochial schools should be maintained. Mrs. Ryan had two premises for her question. First, she questioned whether Catholic schools, increasingly staffed by lay teachers, can fulfill the objective of providing religious education for Catholic children. "Would a Catholic public still wedded to the concept that only religious can really provide a Catholic education welcome or support schools largely staffed by laity?"<sup>28</sup> Second, she asked whether the Church should continue to provide the auxiliary service of education while neglecting to effectively pursue its "first and true" objective of providing religious formation to all of its members.

For in trying to provide a total Catholic education for as many of our young people as possible, we have been neglecting to provide anything like adequate religious formation for all those not in Catholic schools, and we have been neglecting the religious formation of adults.<sup>29</sup>

Not since Bishop Hughes had anyone asked such fundamental questions about the policy of parochial education conducted by the Catholic Church in America.

---

<sup>26</sup>Daniere, loc. cit.    <sup>27</sup>Ryan, op. cit., p. 5.

<sup>28</sup>Ibid., p. 172.    <sup>29</sup>Ibid., p. 175.

Mrs. Ryan was not an alarmist; Catholic school administrators are now quick to acknowledge that unless their schools receive massive public support they will be unable to continue. One such administrator has said:

I do not say this as a plea, but as a simple statement of fact; unless Catholic schools can notably increase revenues from all possible sources, they will be forced to discontinue in increasing numbers, and all American education will be the poorer for it.<sup>30</sup>

Indeed the trend is toward Catholic school closings. "Between 1963 and 1969, 1,000 Catholic schools closed and enrollment dropped 14 percent--from 5.9 to 4.8 million."<sup>31</sup> Another author has said that there was a half-million drop in Catholic school enrollments in 1967 through 1969.<sup>32</sup>

In terms of costs, it has been estimated that ". . .if all the private schools in New Mexico closed, the public school systems' expenditures would increase by \$18 million."<sup>33</sup> If all private schools closed in Illinois, the added cost to the taxpayers ". . .would be at least \$350 million annually. In addition it would cost in excess of \$1.5 billion in capital outlays to pay for the classrooms needed to house these 450,000 students."<sup>34</sup> The Governor of Illinois, speaking of current transfers of

---

<sup>30</sup>Patterson, op. cit., p. 49.

<sup>31</sup>"State Aid to Private Education: An Assessment," Compact, IV (February, 1970), p. 19.

<sup>32</sup>Campbell, et al., op. cit., p. 551.

<sup>33</sup>James H. Koch, "Tax Credits in New Mexico," Compact, IV (February, 1970), p. 28.

<sup>34</sup>Edward J. Copeland, "Purchasing Secular School Services," Compact, IV (February, 1970), p. 30.

nonpublic students to public schools, has said ". . .we can establish that the direct cost of student transfers is more than \$40 million a year to Illinois taxpayers."<sup>35</sup> Last year (1968-69), ". . .25,069 students left the Catholic schools in New York State. . .(they were absorbed) into the New York Public Schools at an estimated \$1,140 per-pupil expenditure."<sup>36</sup> New York City alone, in 1969, had 360,000 students attending Catholic schools. The estimated annual cost to Connecticut, ". . .should the Catholic schools close, is \$70,000,000."<sup>37</sup> According to one estimate, if Catholic schools close in Detroit, Michigan, the price of education would run up by more than \$111 million a year.<sup>38</sup> For the year 1966-67, in the United States, the average estimated expenditure for public elementary and secondary schools per pupil in average daily attendance was \$564.<sup>39</sup> Using the figure of 4.8 million Catholic students currently attending nonpublic schools, it can be seen that if all Catholic schools closed, the annual additional cost would be \$2,707,200,000.

Attempts to gain public aid have proceeded under two basic premises. One is the "child-benefit" theory; the logic used is that the state may extend public aid to assist all children in the acquisition of learning

---

<sup>35</sup>Richard B. Ogilvie, "Illinois Private Schools," Compact, IV (February, 1970), p. 35.

<sup>36</sup>Patterson, loc. cit.

<sup>37</sup>William H. Conley, "Financial Aid for our Schools," Catholic School Journal, LX (March, 1969), p. 4.

<sup>38</sup>Patterson, loc. cit.

<sup>39</sup>"Rankings of the States, 1967," (Washington, D. C.: Research Division of the National Education Association, 1967), p. 25.

in secular subjects. The fact that the parochial school also benefits from the aid can then be ignored. A corollary is that the state is the ultimate beneficiary of the child's secular education, and therefore, should contribute toward it. The other premise taken from the "contract" theory is that the state can enter into legal contracts with any organization (including parochial schools) to buy secular educational services that it would otherwise have to provide itself. Here, it is said that the state is merely fulfilling the conditions of the constitutional mandate of providing education. Such contracts are carefully worded to avoid speaking in terms of aid to parochial schools.

Several methods of parochial aid exist. Free textbooks and transportation are extended under the child-benefit theory. The loaning of textbooks to parochial children as well as the child-benefit theory was first established in Cochran v. Louisiana State Board of Education, 281 U. S. 370. Later, in 1968, the practice of loaning textbooks was again sustained by the Court since it was established that the legislation had ". . . a secular legislative purpose and a primary effect that neither advances nor inhibits religion."<sup>40</sup> In Everson v. Board of Education, 330 U. S. 1, the practice of reimbursing parents for the cost of transporting their children to parochial schools was upheld. At the other end of the continuum is the practice of providing direct aid under the contract theory. This often means paying a certain percentage of the salaries of religious teachers of secular subjects. In between are such alternative methods as: providing pupil personnel services, such as guidance, psychological and speech correction. "This assistance would not be of

---

<sup>40</sup>Board of Education v. Allen, 392 U. S. 236 at 240 (1968).

significant help to schools in meeting their financial burdens, inasmuch as most of them do not provide such services now."<sup>41</sup> Remedial instruction in various subjects, entailing the provision of remedial teachers at public expense is an option. Several states have worked out "dual enrollment" arrangements whereby nonpublic students attend public schools part time. "Public financing of dual enrollment classes would presumably be shared by the student's home district and the state."<sup>42</sup> There is also the practice of granting tuition scholarships or vouchers to all nonpublic school students. "This would take the form of state subsidies paid to parents to apply against tuition charges in nonpublic schools."<sup>43</sup> Finally, there have been proposals to rebate certain proportions of state taxes to all parents with children in schools.

In summary, public aid to parochial schools so far is substantially less than "parity" (financing to the same extent that public schools are financed), but there is some evidence that parity is now the goal of parochial schools:

On November 20, 1969, a suit was started in the Federal District Court in St. Louis seeking to invalidate provisions of the Missouri state constitution which bar the use of public funds 'to help support or sustain any private or public school . . . or other institution of learning controlled by any religious creed, church, or sectarian denomination whatever. . . .' The suit was brought by parents of children attending parochial schools and by parents who are unable to send their children to such schools because of financial burdens.

The legal position of the plaintiffs was simple. The federal Constitution, they said, guarantees their right to send their children to parochial or other nonpublic schools rather than to public schools. The state may not discriminate

---

<sup>41</sup>"Alternative Methods of Nonpublic Aid," Compact, IV (February, 1970), p. 23.

<sup>42</sup>Ibid.    <sup>43</sup>Ibid.

against the parents who make that choice. However, it does engage in such discrimination, they assert, by paying for the education of only those children whose parents choose to send them to public schools.

The complaint asks the court to declare unconstitutional those provisions of the state constitution (and corresponding statutes) which limit state support to public schools and to direct the state officials to 'take action to extend the benefits of free education to all persons. . . .' It further asks that the state authorities be directed to adopt as soon as possible 'a plan of distribution of funds for educational benefits and purposes, which plan shall not discriminate against any person on account of race, creed or color and which plan shall not restrict or impede the free exercise of religion.'

This suit serves at least to clarify the objective of those supporting state aid to public schools. It also reveals what is at stake--full financing of all but the purely religious aspects of religiously-affiliated schools.<sup>44</sup>

Whether or not public funds may be used for the support of religious schools is not an academic issue to be debated only by scholars. It is a very real question which, when answered, will affect a sizable number of taxpaying citizens. If the answer should be "no," it might mean the demise of many parochial schools. The practical result might be to immediately strain the facilities of the public schools. If the answer is "yes," that would mean that many citizens would be taxed to support religions foreign to their ideals. Barring a United States Supreme Court decision concrete enough to preclude debate, the answer lies in (1) the historical relationships between religions and governments--which provided the basis for our constitutional and statutory laws, and (2) legal precedents set by federal court decisions.

---

<sup>44</sup>Joseph B. Robison, "In Congress, the Legislatures and the Courts," Compact, IV (February, 1970), p. 8.

## PURPOSE OF THE STUDY

The purpose of this study is to attempt to determine the legality of using public tax funds for the support of religious elementary and secondary schools in the fifty United States of America through pursuit and analysis of federal court decisions, constitutional and statutory provisions, and the historical relationship between selected religions and governments which support our laws.

The study is factual in its presentation; it deals with a legal question, and no attempt was made to relate it to social or economic factors. The writer sought to present an orderly arrangement of legal principles and state and federal documents relating to the study.

## METHOD OF PROCEDURE

Data for each chapter have been obtained by a variety of methods, each unique to the chapter. The introduction to Chapter I resulted from a review of the literature. In the past there was a general lack of urgency with respect to the topic at hand; only now has a culmination of factors pushed the subject to the foreground. Therefore, due to the paucity of prior research, every attempt was made to familiarize the reader with the reason for this study.

Chapter II involved historical research derived from pertinent books, encyclopedias, and historical documents. The research for this chapter was guided mainly by judicial references to earlier periods, included in the various court cases. The case of Horace Mann League v. Board of Public Works, 242 Md. 645 (1966), was particularly instrumental.



Chapter III entailed a thorough study of both the federal and state constitutional and statutory provisions related to the separation of church and state. The data are presented on a continuum ranging from general prohibitions to the strict preclusion of using public funds for supporting sectarian schools. All provisions for Chapter III are included in Appendix B.

In Chapter IV a cover letter and data sheet were mailed to the attorneys general of each state. The cover letter explained the writer's task and solicited the assistance of the reader. The data sheet, in ten separate questions, asked for the codes to the state's laws (if any) which provide all types of public assistance to elementary and secondary parochial schools or parochial school students. A total of 34 responses were received from the various attorneys general; whereupon letters and data sheets were then mailed to the state superintendents of public instruction in the remaining 16 states. All replied, bringing the total responses to 50 of the 50 states. The cover letter and data sheet are included in Appendix C.

Next, the codes to the 50 states were compiled, and all statutes were researched in the law library at The University of North Carolina at Chapel Hill. All provisions for Chapter IV are included in Appendix C.

Finally, the United States Public Laws were researched for acts which provide federal assistance to parochial elementary and secondary schools or school students. The applicable provisions in those laws are included in Appendix C.

In Chapter V, a complete listing of all federal court cases involving the use of public funds for the support of religious schools or

religious activities in public schools was secured with the assistance of the American Digest System, National Reporter System, American Law Reports, Corpus Juris Secundum, and other legal indexes. Each case was thoroughly read with a view toward its relationship to this work, and if relevant was reported in this study.

#### LIMITATIONS OF THE STUDY

This study is limited to questioning the legality of extending public tax support to elementary and secondary religious schools. None of the court cases deals specifically with colleges and universities, and though their influence may well extend there, it should be noted that only elementary and secondary schools were considered.

Also it should be noted that some of the cases deal with the legality of religious practices in the public schools rather than with the question of extending public aid to religious schools. These cases were included because they face the question of whether public funds and facilities may be used to support religious activities. The courts have treated the two issues as being inseparable, and any one of the cases may have been the foundation for another.

Finally, all public documents and legal and historical materials in the preparation of this study are limited by the writer's interpretation and selective judgment.

#### DEFINITION OF TERMS

Child-benefit theory means that the benefit is intended for the child and any simultaneous benefit accruing to a religious institution is incidental.

Contract theory means that a legislature may contract to purchase secular educational services from nonpublic (including parochial) schools, since it is said that these services would otherwise have to be provided by the legislature in order to fulfill its constitutional duty of providing education for the people of the state.

General welfare theory is derived from the fact that Congress is constitutionally charged with maintaining the welfare of all citizens; therefore, aid may be extended under this theory, even though it incidentally aids a sectarian institution.

Parity means that religious schools seek aid of the same magnitude granted by states to public schools.

Parochial school means that its control is tied directly to the local church, parish, or diocese.

Public funds means either federal or state revenues.

Religious school may also mean parochial school, but a religious school is not necessarily tied to a local church, parish, or diocese.

Where the word court is capitalized, it denotes the United States Supreme Court.

Writ of certiorari (Latin for "to be informed of something") is an order from a higher court to a lower court, requesting that the entire record of a case be sent up for review by the higher court.

## PLAN OF STUDY

Chapter II is intended to focus on the historical events that have led directly to laws regarding the separation of church and state. No questions, such as the ones this study examines, can be considered in the absence of an historical and philosophical presentation.

The courts acknowledge that because man conceived the need for state and church he necessarily relinquished much of his destiny to those two institutions. None of this knowledge has been lost on governments or religions; each has guarded its claim over man and has sought to usurp the other's share. Indeed, where it was not possible to gain power through confrontation, the union of church and state was brought about, and each contrived to co-opt the other. Moreover, both institutions have used the subtleness at their command to obfuscate their quest for control over man. But where overt actions were demanded, there was little hesitancy; history will bear the full truth of this. Heretics and martyrs are so numerous that only the eminent are remembered. Thus, who remembers the thousands of Christians who entered martyrdom under Rome but does not remember Thomas a' Becket: And who knows of the innumerable victims of the Inquisition but does not know of Joan of Arc? It has always been this way. The issue of using tax funds to support religious schools may in part be decided by the historical and philosophical implications that have arisen from church and state relations. So much of the past was concerned with the intrusion of state upon church and church upon state and both upon man that the story can only be told in short-form. But that is the way it should be told lest it overwhelm the mind and make no impact at all. The telling of that story is the purpose of Chapter II.

In addition, Chapter II attempts to set out in bold type the reasons for continuing the operation of religious schools. This called for statements of purpose by religious leaders. Such statements should weigh heavily in a determination of the legality of using public support for religious schools.

In Chapter III on Federal and State Provisions for the Separation of Church and State, a concentrated effort was made to place together all federal and state statutory and constitutional provisions that would shed light on the original intent of the founders of our nation's laws. However, it was felt that every attempt should be made to illustrate the lawmakers' strong beliefs in God, since it is often charged that such laws stem from a general godlessness on the part of their makers. Therefore, the preambles to all state constitutions are included.

Chapter IV was designed to group together all laws which make public funds, whether federal or state, available to elementary and secondary religious schools. Some of those laws have been upheld by the United States Supreme Court under the child-benefit or general welfare theories. In other instances, much doubt remains as to the state and federal constitutionality of the laws.

In Chapter V an analysis was made of all federal cases that satisfied one or more of these criteria: being most frequently cited by the courts when rendering a decision; landmark cases, or cases offering new direction or fresh thought; involving directly the question of aid to religious schools; involving the use of tax-supported schools for religious activities. All of the cases presented challenged laws on the basis that they violated either the First or Fourteenth Amendment, or both.

In Chapter VI a summary of the complete study was presented with particular conclusions on the legality of certain laws enabling religious schools to receive public tax support.

## CHAPTER II

### THE PHILOSOPHICAL AND HISTORICAL RELATIONSHIP BETWEEN SELECTED RELIGIONS AND GOVERNMENTS

## CHAPTER II

### THE PHILOSOPHICAL AND HISTORICAL RELATIONSHIP BETWEEN SELECTED RELIGIONS AND GOVERNMENTS

There is good reason to believe that the earliest gods were objects of nature either in the form of animals or cosmic bodies. Such gods represented forces which were feared, loved, or admired. Originally they must have been worshiped in their natural forms, though it is believed that the gods were quickly anthropomorphized.<sup>1</sup> As theological systems grew they became sophisticated and complex; and groups of priests developed religious dogma. Certainly few years could have passed before the first government realized the power of esoteric religious knowledge over man.

#### I. UNTIL AMERICA

Thus, by the Fifth Egyptian Dynasty (2494--2345 B. C.), a polytheistic fusion of nine gods formed what was known as the Great Ennead, and Egyptian kings, themselves priests, had already assumed particular gods as ancestors. King Userkof, the first of the Fifth Dynasty Kings had been a priest of Re, the sun god, and Re-worship became the first state cult.<sup>2</sup> The state and religion were one, a powerful people-controlling precedent to be followed long after the prestige of Egypt had vanished into history.

---

<sup>1</sup>Margaret S. Drower, "Egypt," Encyclopaedia Britannica (1968), VIII, 34-35.

<sup>2</sup>Ibid., p. 36.

Under these king-gods, pharaoh-worship continued, though apparently other cults were not proscribed until the reign of King Ikhnaton (c. 1362-1379 B. C.). "Ikhnaton. . .was perhaps the most remarkable character in the long line of the Pharaohs. He was a religious fanatic who had probably been high priest of the sun-god at Heliopolis. . . ."3 Ikhnaton devoted himself ". . .to the cult of the Aton, a form of the sun-god Re-Horakhte (;) he initiated a sweeping reform by which apparently the new cult alone was permitted."<sup>4</sup> At the time of Ikhnaton, the god Amon represented the wealthiest and most powerful interests. And ". . .against this long-favoured deity the Pharaoh hurled himself with fury."<sup>5</sup>

He (Ikhnaton) changed his own name from Amenhotep ("Amon is satisfied") to Ikhnaton ("it pleases Aton"), erased the name and figure of Amon from the monuments, abandoned Thebes, and built a new capital on a virgin site at Akhetaton (Tell el-Amarna). This he dedicated to Aton in the sixth year, while splendid temples, palaces, houses and tombs were rising around him. In all local temples the worship of Aton was instituted. The confiscated revenues of Amon and the tribute from Syria and Cush provided means for adorning Akhetaton, and for richly rewarding those who adopted the Aton teaching fervently.<sup>6</sup>

After the death of Ikhnaton, Aton was removed as the state cult and the old religion was restored to the satisfaction of a new king, Horemheb.

Time passed, and in 525 B. C. Egypt was invaded and conquered by Cambyses, the King of Persia. There is ample evidence to indicate that Cambyses pursued a conciliatory policy regarding Egyptian religion. "He (Cambyses) adopted an Egyptian titulary and visited Sais, the seat of the dynasty he had displaced, to obtain official recognition from the goddess Neith. He sacrificed to the gods of Sais and restored their temples."<sup>7</sup>

---

<sup>3</sup>Ibid.   <sup>4</sup>Ibid.   <sup>5</sup>Ibid.   <sup>6</sup>Ibid.

<sup>7</sup>Joan M. Munn-Rankin, "Cambyses," Encyclopaedia Britannica (1968), IV, 695.



Persian domination of Egypt continued until 404 B. C. when with the aid of Greek mercenaries, the Egyptian leader Amyrtaeus set his country free. But the liberation was short-lived, for five years later Persia re-established its dominion. The new Persian king was ruthless, the ". . .country suffered oppression and the violation of its gods. . ."-- though not for long.<sup>8</sup>

Sixty-seven years later Alexander the Great, on his way to the conquest of all Persian territory, reached Egypt. "The people welcomed him as their deliverer, and the Persian satrap wisely surrendered."<sup>9</sup> At first Alexander placated the native priests of each newly conquered state, and encouraged the practice of their own religions. But each new success showed signs of a growing megalomania; ". . .his mind dwelt on ideas of godhead."<sup>10</sup> On ". . .several occasions (he) encouraged favourable comparison of his own accomplishments with those of Dionysus or Heracles."<sup>11</sup> Finally, ". . .convinced with the reality of his own divinity, (he) required its acceptance by others."<sup>12</sup>

Upon Alexander's death the Macedonian Ptolemy was appointed to govern Egypt, and the dynasty he founded lasted for another 300 years. "The Ptolemies treated the Egyptians' religion with respect and permitted the native priesthood to retain some part of its old power."<sup>13</sup>

---

<sup>8</sup>Drower, op. cit., p. 40.

<sup>9</sup>Frank W. Walbank, "Alexander III, called The Great," Encyclopaedia Britannica (1968), I, 573.

<sup>10</sup>Ibid., p. 575.    <sup>11</sup>Ibid.    <sup>12</sup>Ibid.

<sup>13</sup>Drower, op. cit., p. 57.

The last of the Ptolemies, Cleopatra, along with Mark Antony, committed suicide after suffering defeat at the hand of Caesar (Octavian) in the battle of Actium. Octavian entered Alexandria in 30 B. C., and Roman domination of Egypt lasted for the next seven hundred years. True to the Roman policy of divide and rule, during this period ". . . Egypt was merely a member of a larger political unit ruled by an absentee emperor through his deputy the prefect."<sup>14</sup> The significance of Egypt was easily overshadowed by the dominance of Rome.

The religious influence of conquered lands was keenly felt by Rome. Indeed such new modes of worship were probably welcomed. Romanized Greek Gods were concerned with the world of the living and offered little to aspirants of a future life. Astrology from Egypt gained rapid ground, certain mystery cults sprang up, and, in general, people ". . . sought refuge in anything that would enlist the power of the gods in their favor."<sup>15</sup> Furthermore, solar worship derived from Syrian cults was characteristic of this period, and at length proved to be the most influential. Solar worship corresponded the emperor to the greatest of the visible heavenly bodies, the sun. "The emperor was lord on earth, with power now grown absolute and having many features of that of an oriental despot, while the sun was lord in the sky."<sup>16</sup> "(S)uch was the religious world within which Christianity grew up, and over which it finally triumphed."<sup>17</sup>

Christianity arose largely as a protest against emperor-worship.

---

<sup>14</sup>Ibid.

<sup>15</sup>Herbert J. Rose, "Roman Religion," Encyclopaedia Britannica (1968), XIX, 558.

<sup>16</sup>Ibid.    <sup>17</sup>Ibid.

The persecution that Christians suffered under Nero, Marcus Aurelius, and Diocletian is well recounted by History. Christians lost their citizenship, property, and very often their lives. During the early days subtle persecution is evidenced in such tactics as the sophistry used by the Pharisees as their disciples said to Jesus: "What thinkest thou? Is it lawful to give tribute unto Caesar, or not?"<sup>18</sup> And Jesus replied, "Render therefore unto Caesar the things which are Caesar's; and unto God the things that are God's."<sup>19</sup> But by 112 A. D. persecutions were markedly more pronounced. This is seen in a letter from a Roman Governor, Pliny, to the Roman Emperor, Trajan, and in Trajan's response. The letters are quite revealing and are presented in their entirety in Appendix A.

#### TO THE EMPEROR TRAJAN

It is my invariable rule, Sir, to refer to you in all matters where I feel doubtful; for who is more capable of removing my scruples, or informing my ignorance? Having never been present at any trials concerning those who profess Christianity, I am unacquainted not only with the nature of their crimes, or the measure of their punishment, but how far it is proper to enter into an examination concerning them.

... (T)he method I have observed towards those who have been brought before me as Christians is this: I asked them whether they were Christians; if they admitted it, I repeated the question twice, and threatened them with punishment (the penalty was death); if they persisted, I ordered them to be at once punished: for I was persuaded, whatever the nature of their opinions might be, a contumacious and inflexible obstinacy certainly deserved correction.

Some among those who were accused by a witness in person at first confessed themselves Christians, but immediately after denied it; the rest owned indeed that they had been of that number formerly, but had now... renounced that error. They all worshipped your statue and the images of the gods, uttering imprecations at the same time against the name of Christ.

... (T)his contagious superstition is not confined to the cities

---

<sup>18</sup>St. Matthew, 22:17.    <sup>19</sup>St. Matthew, 22:21.

only, but has spread its infection among the neighbouring villages and country. Nevertheless, it still seems possible to restrain its progress. The temples, at least, which were once almost deserted, begin now to be frequented; and the sacred rites, after a long intermission, are again revived. . . .

#### TRAJAN TO PLINY

You have adopted the right course, my dearest Secundus in investigating the charges against the Christians who were brought before you. It is not possible to lay down any general rule for all such cases. Do not go out of your way to look for them. If indeed they should be brought before you, and the crime is proved, they must be punished; with the restriction, however, that where the party denies he is a Christian, and shall make it evident that he is not, by invoking our gods, let him. . . be pardoned upon his repentance. Anonymous informations ought not to be received in any sort of prosecution. It is introducing a very dangerous precedent, and is quite foreign to the spirit of our age.<sup>20</sup>

Through the years persecutions subsided somewhat and official policy toward Christians by 300 A. D. was one of tacit toleration. Though in the last years of his reign Diocletian launched a final attempt to extirpate the new religion. This last attempt known as the Great Persecution of 303 failed, and set the scene for the first Roman Emperor's acceptance of Christianity.

In 306 A. D. Constantine was proclaimed by the Roman troops as Emperor to the western half of the Roman empire that had been divided for administrative efficiency under Diocletian. In securing his rule, however, Constantine had to fight Maxentius who had also been proclaimed emperor, in Rome. "When he was contemplating his attack on Maxentius and considering whence he should obtain divine aid, he saw a cross of light superimposed upon the

---

<sup>20</sup>F. C. T. Bosanquet, The Letters of Pliny The Younger, (London: George Bell and Sons, 1908), pp.393-397.

sun. This vision, whatever its nature, was decisive in his conversion (to Christianity). . . ."<sup>21</sup> Not only did Constantine convert to Christianity, he became pious, showing favor to Christians, and destroying the temples of non-Christians. He even constructed the city of Constantinople, and proclaimed that the city was founded by the command of God.

Apparently successors to the Roman throne were at least as religiously zealous as Constantine. In 380 A. D. Theodosius I The Great issued a law making Catholicism the state religion of the empire. During his reign a Spaniard, Magnus Maximum, was elevated to the purple by fellow troops. But the attempt to usurp the throne failed as Theodosius defeated Maximus in 388 A. D. However, prior to his defeat, Maximus secured his place in history by having the first Christian-heretic, an ascetic named Pricillian, executed for his beliefs. Both Pricillian and the top leaders of the Pricillianists were put to death, and the followers were sentenced to lifelong banishment.

After Christianity became the established Church of Rome,

. . .and the Church gradually increased in wealth and power, there constantly developed disputes in the various provinces between the Roman bishops and the civil authorities as to their respective authority. In time, the Church became so rich and influential that certain of the Popes felt free to assert their authority as being superior to that of the reigning Sovereigns. This naturally developed angry and deep-rooted conflicts and controversies between the Papacy and some of the nations, and also between nations themselves, depending upon whether or not they agreed with the Papacy.<sup>22</sup>

---

<sup>21</sup>Joan M. Hussey, "Constantine," Encyclopaedia Britannica (1968), VI, 385.

<sup>22</sup>Horace Mann League v. Board of Public Works, 242 Md. 645 (1966).

And such was the condition in 1075 when under Pope Gregory VII and Henry IV, King of Germany, ". . .the first great struggle between church and state in the medieval west broke out."<sup>23</sup> To understand the conflict it must first be realized that the structure of government in most Christian kingdoms, and especially Germany, ". . .had become largely dependent on the political, economic, and moral support of the bishops and abbots, who were at the same time holders of vast feudal principalities."<sup>24</sup> Over several centuries King Henry's predecessors had succeeded in acquiring the decisive power to elect and invest ". . .them (the clergy) with the insignia of their ecclesiastical offices (,) the office and the appertaining material possessions were still generally considered as indivisible."<sup>25</sup> Essentially, whoever controlled the "appointment" of bishops and abbots also controlled the government.

Pope Gregory VII sought to restore this investiture power to the Church; naturally Henry balked. The resulting struggle is almost comical in light of today's viewpoint. First, King Henry attacked the Pope by letter, claiming that the Pope was attempting to deprive him of his crown. Next, the Pope did just that; he publically forbade Henry the rule of his kingdom, and he excommunicated him as well. Would the princes, bishops, and thus the people follow the Pope or Henry? "It soon became evident that the pope's position was stronger than the king's."<sup>26</sup> Political pressure forced Henry to seek Pope Gregory's pardon; thereupon, Henry set out in mid-winter across the Alps to Canossa, Italy in search of the pope.

---

<sup>23</sup>Gerhart B. Ladner, "Gregory," Encyclopaedia Britannica (1968), X, 909.

<sup>24</sup>Ibid.    <sup>25</sup>Ibid.    <sup>26</sup>Ibid.

When he arrived at Canossa he was faced with the even harder task of obtaining absolution from the pope. "Gregory hesitated to absolve and even to receive the king, who nevertheless on three successive days came to the castle and stood before the gate in the garb and attitude of a penitent."<sup>27</sup>

Finally, Gregory did pardon Henry, but only after extracting a promise that the king would recognize the pope's authority. Once pardoned, Henry quickly rescinded, and never complied with Gregory's demands for reforms. Again Gregory excommunicated Henry, but this time Henry countered decisively. He actually militarily besieged Rome, drove Gregory into exile, and named Archbishop Guibert of Ravenna as the new pope.

Two decades after the "first struggle between church and state," there began a struggle which involved the Roman Church and nearly all of the continental European nations and England--the Crusaders were marching! Crusade means "marked with a cross," a term derived from the fact that a cross was the symbol used to identify the papal-sanctioned armies.

In about 1055 war broke out in the mid-east between several Turkish chieftains, and the effect on Europe was the disruption caused to pilgrim traffic to the Holy Sepulchre in Jerusalem. By 1095 such pilgrimages were effectively precluded, and in that year Pope Urban II called for a papal army to recapture the Holy Sepulchre. Urban's ostensible cause was noble, and his call to arms was successful. Armies led by powerful feudal princes arose in France as well as Italy. Indeed by the last crusade--two-hundred years later--men from all of Europe had soldiered for the papacy. Moreover,

---

<sup>27</sup>Ibid., p. 910.

the first crusade was successful. Jerusalem fell to the crusaders scarcely four years after Urban's appeal. But as the years and crusades multiplied, it became apparent that the real purpose of the Church was to direct war ". . . against anyone whom it declared to be the enemy of Christ."<sup>28</sup> And though the popes continued to preach crusades against the Muslims, the effect was ever-diminishing.

Several factors contributed to the demise of crusading enthusiasm. First, the European nations became preoccupied with their own wars. "The wars of the Teutonic knights along the shores of the Baltic, the Hundred Years' War in France, the reconquest of Spain from the Moors and the campaigns against the Ottoman Turks all diverted attention from the Holy Sepulchre."<sup>29</sup>

Finally the rise of national monarchies, the spread of commerce, the increasing influence of the middle class, the gradual elimination of feudalism, manorial development, the Renaissance, geographical discovery and the Reformation all contributed to causing the ideal of the crusade to fade into the background.<sup>30</sup>

Initially the crusades enhanced the prestige of the papacy, but as fervor for the Holy Wars waned, so did much of the papal influence. Fifty years into the war found the Turks growing stronger, and territory held by the crusaders being recaptured. The first loss was Edessa in 1144, and the fall shocked all of Europe. The papal image was on the line, and the significance of that fact was not lost on reigning monarchs: state resistance to papal authority stiffened in both France and England.

---

<sup>28</sup>Harold S. Fink, "Crusades," Encyclopaedia Britannica (1968), VI, 828.

<sup>29</sup>Ibid., p. 833.      <sup>30</sup>Ibid.



As it happened, the fall of Edessa came almost at the same time that Thomas a' Becket was being introduced to Archbishop Theobald of Canterbury, and only a decade before Theobald introduced Becket to the King, Henry II. Henry and Becket became intimate friends and "Henry's influence secured Thomas' election in 1162 to the see of Canterbury, vacated by the death of Theobald, who may have intended Thomas to succeed him."<sup>31</sup> Henry, no doubt, expected Becket to cooperate once in office, but the following year he was certainly undeceived. The King sought to clarify matters with the Church, and drew up a constitution which would ". . .define the boundaries between lay and ecclesiastical jurisdictions, regulate the exercise of excommunication, control appeals to Rome and conserve royal rights in episcopal and monastic elections."<sup>32</sup> Henry hoped for Becket's support, but it was not forthcoming; Becket surprisingly took a hard-line stand in favor of the Church. The relationship between Henry and Becket quickly deteriorated and Becket went into exile. Becket remained intransigent; and Henry, vindictive. In December of 1170 Henry is reputed to have said in the presence of his knights: "Have I not about me one man of enough spirit to rid me of a single insolent prelate?"<sup>33</sup> Four days after Christmas Thomas a' Becket was murdered in his cathedral church.

Becket died not at the hands of infidels for the church and the state were yet one. He died at the whim of a king, and rex non potest peccare. That fact is harsh, but if Becket's death required vindication, the wait was

---

<sup>31</sup>Eric Stone, "Becket, Thomas (A')," Encyclopaedia Britannica (1968), III, 353.

<sup>32</sup>Ibid., p. 354.

<sup>33</sup>Horace Mann League v. Board of Public Works, 242 Md. 645 (1966).

short. Nine years later, at the hand of the pope, the third Lateran council passed decrees which led to nearly four-hundred years of persecution of non-Christians--the Inquisition was begun.

The Inquisition as a papal judicial institution sought to combat heresy, and to proselytize non-Christians. While the motives and final effect of that office may be questionable, its methods are well known. Torture was used to extort confessions, and admitted guilt was met with brutal punishment. Conviction by papal Inquisitors could mean flogging, confiscation of property, or even life imprisonment. Such were the penalties for those who recanted; for non-repenters, burning at the stake was common. The penalty of death was imposed by the civil authorities and not by the church, ". . .but the ecclesiastical authorities were in fact morally responsible, because they could excommunicate a ruler who did not carry out the sentence where it was prescribed by law."<sup>34</sup> In Europe the Inquisition was concerned with the prosecution of heresy, alchemy, witchcraft, and with the conversion of Jews, Muslims, and later Protestants. But in time, as European influence was extended along with Spain's rule to the new lands of Mexico and Peru, the Spanish Inquisition likewise transferred its terrible influence to those shores, and there the heathens were slain with vigor.

But, to judge the action fairly, we must transport ourselves to the age when it happened. The difficulty that meets us in the outset is, to find a justification of the right of conquest, at all. But it should be remembered, that religious infidelity, at this period, and till a much later date, was regarded--no matter whether founded on ignorance or education, whether hereditary or acquired, heretical or Pagan--as a sin to be punished with fire and faggot in this world, and external suffering in the next. This doctrine, monstrous as it is, was the creed of the Romish, in

---

<sup>34</sup>Edward A. Ryan, "Inquisition," Encyclopaedia Britannica (1968), XII, 272.

other words, of the Christian Church,--the basis of the Inquisition, and of those other species of religious persecutions, which have stained the annals, at some time or other, of nearly every nation in Christendom. Under this code, the territory of the heathen, whenever found, was regarded as a sort of religious waif, which, in default of a legal proprietor, was claimed and taken possession of by the Holy See, and as much was freely given away by the head of the Church, to any temporal potentate whom he pleased, that would assume the burden of conquest. Thus Alexander the Sixth generously granted a large portion of the Western hemisphere to the Spaniards, and of the Eastern to the Portuguese. These lofty pretensions of the successors of the humble fishermen of Galilee, far from being nominal, were acknowledged and appealed to as conclusive in controversies between the nations.<sup>35</sup>

Among the prominent that succumbed to the Inquisition were Joan of Arc and John Huss. Joan was charged with 70 counts of heresy, stemming from the fact that she,

. . .showed blasphemous presumption: in particular, that she claimed for her pronouncements the authority of divine revelation; prophesied the future; endorsed her letters with the names of Jesus and Mary; claimed to be assured of salvation; immodestly wore men's clothing; and dared to claim that her saints spoke in French and not in English.<sup>36</sup>

Joan, of course, was burned at the stake. Afterward, the executioner ". . .declared that Joan's heart would not burn and that he found it intact amid the ashes."<sup>37</sup>

Huss was a Czechoslovakian and Dean of the Faculty of Prague University. His heresy, according to the Inquisition, was due to his support of the writings of John Wycliffe. Wycliffe, an Englishman, placed the

---

<sup>35</sup>William H. Prescott, History of the Conquest of Mexico (Philadelphia: J. B. Lippincott & Co., 1843), pp. 28-30.

<sup>36</sup>Yvonne M. Lanhers, "Joan, Saint," Encyclopaedia Britannica (1968), XIII, 5.

<sup>37</sup>Ibid., p. 6.

state in importance, and the biblical scriptures in authority, over the Church. He also believed in such revolutionary ideas as the right of the clergy to marry and the evil involved in Church-sold indulgences. Furthermore, Wycliffe advocated the translation of the Bible into the vernacular, and he advanced the doctrine of predestination. Ironically, Wycliffe lived out his days in peace; but Huss, the faithful Wycliffe supporter, was pronounced a dangerous heretic "fit only for death." "When he refused to recant, he was solemnly sentenced on July 6, 1415, and burned at the stake."<sup>38</sup>

Both Wycliffe and Huss were forerunners of one "Martinus Luther ex Mansfeld, Germany," a priest and a scholar whose 95 Theses combined with the invention of the printing press to jolt the Church in a most unprecedented manner. Asked to recant at the Diet of Worms, Luther refused saying, "Here I stand. I can do no other."<sup>39</sup>

Curiously, the first official and national breach with Rome was brought about by a man who ". . . had defended the papacy against Luther in 1521 and had received in return the title 'defender of the faith.'"<sup>40</sup> Actually Henry VIII never liked Protestantism but Pope Clement VII stood between Henry, a divorce from Catherine, and remarriage with Anne Boleyn. A man of decisiveness was Henry, and he quickly moved to become exponent of national antipathy to papal jurisdiction and ecclesiastical privilege, head of the Church of England, and free to marry Anne. "But the recogni-

---

<sup>38</sup>Frantisek M. Bartos, "Huss, John," Encyclopaedia Britannica (1968), XI, 911.

<sup>39</sup>Ernest G. Rupp, "Luther, Martin," Encyclopaedia Britannica (1968), XIV, 440.

<sup>40</sup>Albert F. Pollard and Richard B. Wernham, "Henry VIII," Encyclopaedia Britannica (1968), XI, 368.

tion of the royal supremacy could only be enforced at the cost of the heads of Sir Thomas More, Bishop Fisher and a number of monks. . .who signalized themselves by their devotion."<sup>41</sup> After the knowledge of these "judicial murders" reached Rome,

. . .the Pope issued a bull which excommunicated Henry, delivered his soul to Satan, and his kingdom to the first invader. The King replied by sequestering and, after pillaging, destroyed a large number of religious Houses (reputed as 645 monasteries, 2374 chapels, 90 collegiate churches and 110 charitable institutions).<sup>42</sup>

Henry died in 1547 and in 1553 was succeeded by his daughter by Catherine, Mary I. Mary's first official task was to annul all antipapal acts and to re-establish the Roman Catholic Church in England. Returned to power, the bishops fell with good speed and great enthusiasm to the task of persecuting the heretics. "Between February 1555 and November 1558 nearly 300 men and women were burned at the stake for heresy."<sup>43</sup> But Mary's pogram had just the opposite from the desired effect for ". . .it stamped on the English mind a hatred, unthinking, ferocious, and almost indelible of Rome and all its belongings."<sup>44</sup>

Mary's rule was short for she died after five years in office, and her half-sister Elizabeth I assumed the throne. With Elizabeth came yet another change in the state religion, the Church of England was restored. The new queen's chief concern was unity and stability, and care was taken not to stir up religious dissension. After two decades of rule when

---

<sup>41</sup>Ibid.

<sup>42</sup>Horace Mann League v. Board of Public Works, 242 Md. 645 (1966).

<sup>43</sup>John H. Plumb, "The Tudors (1485-1603)," Encyclopaedia Britannica (1968), VIII, 495.

<sup>44</sup>Ibid.

it looked as if Elizabeth had indeed achieved a measure of religious tranquillity, the Catholics attempted to stage a revival, and Protestant pressure ". . .brought upon the English Catholics the drastic penal laws of 1581, 1585 and 1593. More than 200 were executed as traitors. . .(and) heavy fines were imposed for saying or hearing Mass. . . ."45 The church and state were still inseparable.

Whoever refused to support the established form of worship, whatever that might be, was looked upon as a "rebel" against the government.

. . .(A)nd each party believed it a duty to convert or exterminate the other, and the alternative offered to the heretic was to "turn or burn."<sup>46</sup>

Was this harsh policy? There were those who thought not, for as Elizabeth's reign and the Sixteenth Century were drawing toward a close, the Puritan movement was in full bloom. That group sought to ". . .purge the church of 'Romish Dregs' and give it a 'learned and preaching ministry.'"<sup>47</sup>

Thus was Europe in 1600--a buzzing matrix of religious fomentation. Our forefathers sought asylum in America, a country where they could worship according to the dictates of their consciences; a country then unstained by state established religions.

## II. AMERICA

Notwithstanding their religious convictions, the first colonists were Englishmen, their king was English, their church was English, and the

---

<sup>45</sup>Ibid., p. 497.

<sup>46</sup>Horace Mann League v. Board of Public Works, 242 Md. 645 (1966).

<sup>47</sup>Plumb, loc. cit.

Church held that it should remain so. In that vein, in the year of 1650, the Bishop at Fulham wrote the following instructions to Sir William Berkeley, Governor of Virginia:

Article Ist. That in the first place you be careful, Almighty God may be duly and daily served, according to the form of Religion established in the Church of England, both by yourself and all the people, under your charge, which may draw down a Blessing upon all your Endeavors: and let every Congregation, that hath an able minister, build for him a convenient Parsonage House: To which for his better maintenance over and above the usual Pension, to lay 200 acres of Gleable Land; For the clearing of that Ground, every of his Parishioners, for 3 years shall give some days labours, of themselves and their servants; And see that you have a special care that the Glebe Land be set as near his Parsonage House as may be, and that it be of the best conditioned Land; Suffer no Invasion in Matters of Religion, and be careful to appoint sufficient and comformable ministers to each Congregation, that may catechise and Instruct them in the Ground and principles of Religion.<sup>48</sup>

Clearly the Church intended that mere distance should not alter its special position. Taxation levied upon all of sixteen or more years for the support of the Church was to go on as usual. That was the King's law, and though unpopular, it remained in force until 1758 when under the pressure of a severe economy, the Virginia Assembly temporarily annulled it. Cut off from their incomes, colonial parsons appealed to the King; the King overturned the Assembly's act, paving the way for the parsons to seek redress in the courts. Acting in the capacity of defense attorney for the Assembly, a young lawyer named Patrick Henry uttered a line of reasoning destined to forever affect the relationship between the Church and King in a nascent America. Henry avowed,

. . .that the Act of 1758 had every characteristic of a good law;  
 . . .that a King, by disallowing acts of this salutary nature, from

---

<sup>48</sup>William Stevens Perry, Historical Collections Relating to the American Colonial Church (Hartford, Connecticut: no publisher given, 1870), I, pp. 1-2.

being the father of his people, degenerated into a tyrant, and forfeits all right to his subjects' obedience.

. . .that the only use of an established church and clergy in society, is to enforce obedience to civil sanctions. . .that when a clergy ceases to answer these ends, the community have no further need of their ministry, and may justly strip them of their appointments; that the clergy of Virginia, in this particular instance of their refusing to acquiesce in the law in question, had been so far from answering, that they had most notoriously counteracted, those great ends of their institution; that. . .instead of countenance, and protection and damages, (the clergy) very justly deserved to be punished with signal severity.<sup>49</sup>

After a deliberation of only five minutes, the jury decided in favor of the plaintiff and awarded him one penny in damages. It was upon this celebrated case that Patrick Henry rose to such fame that seventeen years later, on July 5, 1776, he accepted the position of first Governor of the State of Virginia. Henry came to be considered as a champion of religious freedom, and he authored the first Virginia doctrine to that effect. The Sixteenth Article of the Virginia Bill of Rights reads,

that religion, or the duty we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, and not by force or violence; and, therefore, that all men should enjoy the fullest toleration in the exercise of religion, according to the dictates of conscience, unpunished and unrestrained by the magistrate, unless, under color of religion, any man disturb the peace, the happiness, or the safety of society; and that it is the mutual duty of all to practise Christian forbearance, love, and charity towards each other.<sup>50</sup>

That article represented more than mere words; it meant that the authority of government now stood for the separation of church and state.

---

<sup>49</sup>Moses C. Tyler, Patrick Henry, American Statesmen (Boston: Houghton, Mifflin and Company, 1887), III, p. 53.

<sup>50</sup>Ibid., pp. 208-209.



It meant that the long struggle so horribly pocked with prosecutions, persecutions, and executions was now beginning to take a new direction. The people were jubilant, the clergy became unpopular and declined in numbers, and many thought that the pendulum of change was swinging too far in the wrong direction.

In 1784 Patrick Henry, fearing a decline in morals, lent his support to "A Bill Establishing a Provision for Teachers of the Christian Religion." The bill, in effect, would have taxed for the support of sectarian schools, with each taxpayer being able to designate the denominational school to which his money should go (for the full text, see Appendix A). Since known as the Assessment Bill, it was about to be acted upon by Virginia's Legislature when James Madison took advantage of Patrick Henry's second move into the Governorship. Madison wrote, "Mr. Henry, the father of the scheme, is gone up to his seat for his family, and will no more sit in the House of Delegates--a circumstance very inauspicious to his offspring."<sup>51</sup> Madison proposed a postponement for further consideration, and between sessions, circulated his opinions embodied in the "Memorial and Remonstrance Against Religious Assessments." Timelessly he wrote:

. . .it is proper to take alarm at the first experiment on our liberties. The freemen of America did not wait till usurped power had strengthened itself by exercise, and entangled the question in precedents. They saw all the consequences in the principle, and they avoided the consequences by denying the principle. We revere this lesson too much, soon to forget it. Who does not see that the . . .same authority which can force a citizen to contribute three pence only of his property for the support of any one establishment, may force him to conform to any other establishment in all cases whatsoever?<sup>52</sup>

---

<sup>51</sup>William W. Henry, Patrick Henry, Life, Correspondence, and Speeches (New York: Charles Scribner's Sons, 1891), II, p. 207.

<sup>52</sup>Gaillard Hunt (ed.), The Writings of James Madison (New York: G. P. Putnam's Sons, 1783), II, p. 185.

Apparently the Legislature was so captured by Madison's treatise that it was not satisfied to simply defeat the Assessment Bill, for it passed a bill which had been a subject of contention since its publication in 1779; Jefferson's "Bill for Establishing Religious Freedom." Jefferson wrote "That to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical."<sup>53</sup>

Both Madison and Jefferson stressed the concepts of voluntariness in matters of conscience, and the extra-governmental nature of religion. There can be little doubt that their work and the prevailing public sentiment heavily influenced the opening words of the United States Bill of Rights: "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. . . ."<sup>54</sup> The significance of this brief clause is difficult to overstate, nor can it be easily interpreted.

In 1802, in a letter to the Danbury Baptist Association (of Connecticut) Jefferson said of the religious clause,

. . .I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should "make no law respecting an establishment of religion, or prohibiting the free exercise thereof," thus building a wall of separation between Church & State.<sup>55</sup>

Jefferson's use of "their legislature" must have been a conscious reference to the federal legislature, since there is ample evidence to

---

<sup>53</sup>Hening Statutes of Virginia, XII, 84-86, (1823).

<sup>54</sup>United States Constitution, "Bill of Rights," Amendment I.

<sup>55</sup>Andrew A. Lipscomb and Albert E. Bergh (ed.), The Writings of Thomas Jefferson (Washington, D. C.: The Thomas Jefferson Memorial Association, 1904), XVI, pp. 281-282.

indicate that Congress had no intention of similarly binding the States.

Thus in 1845 the United States Supreme Court held that:

The Constitution makes no provision for protecting the citizens of the respective states in their religious liberties; this is left to the state constitutions and laws. Nor is there any inhibition imposed by the constitution in this respect on the states.<sup>56</sup>

This interpretation appears to have been ". . .the settled and unchallenged constitutional doctrine for the first eighty-five years of the existence of the nation."<sup>57</sup>

The Fourteenth Amendment is now generally considered to bind the states by the guarantees found in the Bill of Rights. However, regarding religion, there is much evidence to suggest that the 39th Congress had no such idea in mind. The 39th Congress passed the Fourteenth Amendment in 1868; seven years later Representative Blaine (also a member of the 39th Congress) introduced a bill for the express purpose of making the religious provisions of the First Amendment binding upon the States. It read in part: "No State shall make any law respecting an establishment of religion or prohibiting the free exercise thereof."<sup>58</sup> Blaine's proposal drew wide discussion; Congressman Banks, also a member of the Congress that passed the Fourteenth Amendment, said of the Blaine Amendment:

If the Constitution is amended so as to secure the object embraced in the principal part of the proposed amendment it

---

<sup>56</sup>Permoli v. First Municipality of New Orleans, 44 U.S. 588, at 609 (1845).

<sup>57</sup>F. William O' Brien, "The States and 'No Establishment': Proposed Amendments to the Constitution Since 1798," (Topeka, Kansas: A pamphlet from the National Organization on Legal Problems of Education, 1965), p. 186.

<sup>58</sup>U. S. Congressional Record, 44th Cong., 1st Sess., (1875), IV, 5189-5191.

prohibits the States from exercising the power they now exercise. Congress at present has no power to legislate upon this subject in any way or form. (In addition to the Blaine Amendment there have been 20 other proposed amendments--the last of which was in 1930--to make religious restrictions binding upon the States.)<sup>59</sup>

The Fourteenth Amendment reads in part:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law. . . .<sup>60</sup>

But that amendment has only recently been considered to hold the federal and the State governments in the same relation to religion. It was in 1940 that the Supreme Court said,

The First Amendment declares that Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. The Fourteenth Amendment has rendered the legislatures of the states as incompetent as Congress to enact such laws.<sup>61</sup>

Since that ruling the Court has been consistent in its view of the binding powers of the Fourteenth Amendment with respect to religion, despite an earlier ruling which specifically held that the Bill of Rights bound only the national government.<sup>62</sup> Moreover, in 1947, in the case of Adamson v. California, 332 U. S. 46 at 71-72, the Court lent judicial support to the so-called incorporation theory: that the framers of the Fourteenth Amendment intended to bind the State governments by all the restrictions and guarantees in the Bill of Rights.

Nevertheless, the Blaine Amendment was defeated not because it was

---

<sup>59</sup>U. S. Congressional Record, 44th Cong., 1st Sess., (1876), IV, 5191.

<sup>60</sup>U. S. Constitution, Amendment XIV.

<sup>61</sup>Cantwell v. Connecticut, 310 U. S. 296 (1940).

<sup>62</sup>Baron v. Mayor of Baltimore, 32 U. S. 464 (1833).

forestalled by the Fourteenth Amendment, but because it was not strict enough in prohibiting the use of tax funds for the support of denominational schools.<sup>63</sup> At the time of the Blaine Amendment, the concept of public schools had just become established, and the restriction of tax to the support of those schools only was emerging as one of the leading foci of the church and state issue. President Grant's remarks (in 1876) aptly foreshadowed the direction of the coming controversy when he said:

Encourage free schools and resolve that not one dollar of the money appropriated to their support shall be appropriated to the support of any sectarian school; that neither the state or nation, nor both combined, shall support institutions of learning other than those sufficient to afford to every child in the land the opportunity of a good common-school education, unmixed with sectarian, pagan, or atheistical dogma.

Leave the matter of religion to the family altar, the church, and private schools entirely supported by private contributions. Keep the church and state forever separate.<sup>64</sup>

### III. AMERICA: THE CHURCH AND STATE SCHOOL QUESTION

President Grant's remarks may well have been prompted by thoughts of the recent past. Immigration had been heavy, and the States had experienced an influx of diverse denominations. Controversies had arisen over which religion was to be taught within the schools, and the solution in most States was to make the schools nonsectarian. This course had met with the clerical disfavor of all religions, and many--Protestant and Catholic alike--had attempted to establish their own schools. By the date of Grant's statement, however, only the Lutheran Protestant school survived

---

<sup>63</sup>U. S. Congressional Record, 44th Cong., 1st Sess., (1876), IV, 5245, 5246, 5562, 5568, 5580-5595.

<sup>64</sup>Rena M. Atchison, Un-American Immigration: Its Present Effects and Future Perils (Chicago: no publisher given, 1894), pp. 90-91.

in any strength. Indeed, there was little reason to continue since the "nonsectarian" schools which used the King James version of the Bible, and sang Protestant hymns, were in reality Protestant. But the Catholics, who saw the schools as "neutral" against Catholicism found incentive to maintain their parochial schools.

At first bishops merely urged each parish to establish a denominational school. However, in 1884 when the Third Plenary Council of the Church hierarchy met in Baltimore, ". . .the Church made it obligatory for each parish to set up its own school and for each Catholic to send his children to a parochial school."<sup>65</sup> "The announced goal of the bishops (was), 'every Catholic child in a Catholic school.'<sup>66</sup> Two of the resolutions adopted by the Council read,

1. That near every Church a parish school, where one does not yet exist, is to be built and maintained in perpetuum within two years of the promulgation of this council, unless the bishop should decide that because of serious difficulties a delay may be granted.

2. That all Catholic parents are bound to send their children to the parish school, unless it is evident that a sufficient training in religion is given either in their own homes, or in other Catholic schools; or when, because of a sufficient reason, approved by the bishop, with all due precautions and safeguards, it is licit to send them to other schools. What constitutes a Catholic school is left to the decision of the bishop.<sup>67</sup>

---

<sup>65</sup>Peter H. Rossi and Alice S. Rossi, "Some Effects of Parochial School Education in America," in Society and Education: A Book of Readings, (ed.) by Robert J. Havighurst, Bernice L. Neugarten, and Jacqueline M. Falk, (Boston: Allyn, Inc., 1967), p. 205.

<sup>66</sup>Albert C. Koob, "Financial Problems of Parochial Schools," (New York: Eleventh National Conference on School Finance, 1968), p.99, (Mimeographed.)

<sup>67</sup>Reginald A. Neuwien (ed.), Catholic Schools in Action (Notre Dame: University of Notre Dame Press, 1966), p. 9.

Therefore, at the outset (under the threat of discriminatory Protestant schools), and at length (under the official pressure of the Church), Catholic schools grew. Although the stated goal of the bishops was never realized, within 84 years (1968), Catholic pupil enrollment represented almost 22 percent of the United States' elementary and secondary school-age population. Of the 13 percent of non-public elementary and secondary schools, 90 percent were Catholic, meaning that 99 percent of the schools were either public or Catholic.<sup>68</sup>

Reasons for the birth of Catholic schools are thus clear, but reasons for their persistence, long after the public schools were truly secularized, are not immediately apparent. Organizational inertia, or a reluctance to disband that which has already been developed, may account for continued existence. "But organizational inertia accounts merely for persistence, not growth and vigor."<sup>69</sup> Some growth and vigor may be attributed to the fact that ". . .the Roman Catholic schools have neither developed into a very expensive type of private education nor provided second-class education for their students."<sup>70</sup> Yet Catholic curricula are mostly college-oriented, and expensive vocational courses are not readily available for non-college oriented students. Another reason is that "American Catholics are a very religious group, . . .religion is valued, and . . . religious education is by extension also valued."<sup>71</sup> John Redden and

---

<sup>68</sup>Edd Doerr, "To the Commission to Study State Aid to Nonpublic Education," (statement delivered on behalf of the American Civil Liberties Union, Baltimore, October 6, 1969).

<sup>69</sup>Andrew M. Greeley, and Peter H. Rossi, The Education of Catholic Americans (Chicago: Aldine Publishing Company, 1966), p. 4.

<sup>70</sup>Ibid.    <sup>71</sup>Ibid.

Francis Ryan, authors of a textbook for philosophy of education courses in Catholic colleges and universities, have written, ". . .religious education is the primary function, the raison d'être, of the Catholic school."<sup>72</sup>

But does this mean that the Catholic school simply makes available religious education, distinct from secular education? Again, Redden and Ryan: "Religion must, of necessity, permeate all life and education. Its teachings constitute the very core and foundation upon which all education for the true, the good, and the beautiful must be founded."<sup>73</sup>

There must be no mistake about the place of religion in education in the Catholic school for the United States Supreme Court has said that "No tax, in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion."<sup>74</sup> Furthermore, on the subject of laws that would aid religions, the Court has said that if either the purpose or primary effect of the enactment ". . .is the advancement or inhibition of religion then the enactment exceeds the scope of legislative power as circumscribed by the Constitution."<sup>75</sup> In concurring with that opinion, Justice William O. Douglas said:

Financing a church either in its strictly religious activities or in its other activities is equally unconstitutional, as I understand the Establishment Clause. Budgets for one activity may be technically separable from budgets for others. But the institution is an inseparable whole, a living organism, which is strengthened in proselytizing when it is strengthened in

---

<sup>72</sup>John D. Redden and Francis A. Ryan, A Catholic Philosophy of Education (Milwaukee: The Bruce Publishing Company, 1956), p. 173.

<sup>73</sup>Ibid.

<sup>74</sup>Everson v. Board of Education, 330 U. S. 1 (1947).

<sup>75</sup>Abington School District v. Schempp, 374 U. S. 203 (1963).



any department by contributions from other than its own members.  
 . . .What may not be done directly may not be done indirectly  
 lest the Establishment Clause become a mockery.<sup>76</sup>

Confining the discussion then to the Catholic Church, this crucial question emerges: "Is the religious dogma of the Church intended to be inseparable from education within Catholic schools?" At least some insight might be gained by determining what Catholics mean when they say education. A definition frequently quoted is as follows:

Education is the deliberate and systematic influence exerted by the mature person upon the immature through instruction, discipline, and the harmonious development of all the powers of the human being, physical, social, intellectual, moral, aesthetic, and spiritual, according to their essential hierarchy, by and for their individual and social uses and directed toward the union of the educand with his Creator as the final end.<sup>77</sup>

In the words of Joseph H. Fichter, author of Parochial Schools: A Sociological Study, "It is a commonplace observation that in the parochial school religion permeates the whole curriculum, and is not confined to a single half-hour period of the day."<sup>78</sup> Fichter partly focused his study on course content and pedagogical methods within Catholic schools. Included among his findings was evidence such as: (1) texts that were written to emphasize Catholic dogma; the tests at the end of reading matter frequently asked religious questions, (2) history books that stressed the contributions made by Catholic peoples, and (3) arithmetic that was taught in a way that would induce pious thoughts; a problem for example: "If it takes forty thousand priests and a hundred and forty thousand sisters to care for

---

<sup>76</sup>Ibid.

<sup>77</sup>Redden and Ryan, op. cit., pp. 23-24.

<sup>78</sup>Joseph H. Fichter, Parochial Schools: A Sociological Study (Indiana: University of Notre Dame Press, 1958), p. 86.

forty million Catholics in the United States, how many more priests and sisters will be needed to convert and care for the hundred million non-Catholics in the United States?"<sup>79</sup>

Redden and Ryan have commented that ". . .a religious atmosphere is a vital necessity for religious education."<sup>80</sup> Enumerating what was considered necessary to achieve a religious atmosphere, the authors said that,

. . .recognition must be given to the value and importance of the influences of environment on religious education. These influences include: the presence in the classroom of the crucifix and religious pictures; the teacher's personality, character, and . . .the practice of religion through prayers, the Mass, the sacraments, good deeds, and the innumerable cultural, aesthetic, and moral practices that flow from the Catholic liturgy.<sup>81</sup>

The authors repeatedly make it clear that by their use of the words religious education they mean all education; thus they say that the "Catholic religion permeates the entire atmosphere, comprising in truth and fact, the 'core curriculum' around which revolve all secular subjects."<sup>82</sup>

Fichter found in his study an environment true to Redden's and Ryan's description; in addition, the author recounted the extent of daily religious activities in which students participate. Fichter noted that attendance at Mass was not compulsory, but for those who came late there was, in one teacher's class, the punishment of writing out Mass.<sup>83</sup>

Yet these authors, though distinguished, present an academic viewpoint, garnered from outside the institution of Catholicism. Perhaps a

---

<sup>79</sup>Ibid.    <sup>80</sup>Redden and Ryan, op. cit., p. 185.    <sup>81</sup>Ibid., pp. 185-186.

<sup>82</sup>Ibid., p. 357.

<sup>83</sup>Fichter, op. cit., pp. 89-92.

greater degree of credibility could be gained from the Catholic hierarchy proper. Modern-day spokesmen for the Catholic school policy are numerous. Monsignor Donohue, Catholic Director of the Division of Elementary and Secondary Education, has advanced the position that ". . .if in accepting aid you have to lean over backwards to exorcise any Christian concepts from the subjects the state will pay for, then we've paid too high a price."<sup>84</sup> And the New York State Council of Catholic School Superintendents has said that "The Catholic school must stand as a unique institution in the community. Its uniqueness must flow from a philosophy of education that is operative in all aspects of school life."<sup>85</sup>

Moving now to the apogee of the Catholic Church, Pope John XXIII, in his 1963 encyclical, Pacem in Terris said:

It is indispensable, therefore, that in the training of youth, education should be complete and without interruption: namely, that in the minds of the young, religious values should be cultivated and the moral conscience refined, in a manner to keep pace with the continuous and ever more abundant assimilation of scientific and technical knowledge. And it is indispensable, too, that they be instructed in the proper way to carry out their actual tasks.<sup>86</sup>

In a similar vein, Pope John XXIII's predecessor, Pope Pius XII in 1955 addressed the teaching sisters, saying that ". . .according to the Catholic concept, the object of the school and education is the formation of the perfect Christian. Your entire school and educational system would

---

<sup>84</sup>William Ryan, "Washington Report," Catholic School Journal, LXVIII (December, 1968), 4.

<sup>85</sup>"The State of the Schools," (New York: New York State Council of Catholic School Superintendents, September 1, 1969) (mimeographed)

<sup>86</sup>Neuwien, op. cit., p. 18.

be useless were this object not the central point of your labor."<sup>87</sup>

Finally, commenting on the unchanging nature of Catholic educational aims, goals, purposes, and philosophy, the Right Reverend Edward B. Jordan has said that:

First in importance is the masterful Encyclical of Pope Pius XI, On the Christian Education of Youth, in which the modern world has been given an authoritative presentation of the Church's position on the more important of the controversial points in educational theory and practice. Thus the Encyclical may be said to constitute a modern Charter of Catholic Education.<sup>88</sup>

Pope Pius XI's Encyclical reads in part:

. . . (T)he so-called "neutral" or "lay" school, from which religion is excluded, is contrary to the fundamental principles of education.

. . . (T)he mere fact that a school gives some religious instruction (often extremely stinted), does not bring it into accord with the rights of the Church and of the Christian family, or make it a fit place for Catholic students. To be this, it is necessary that all the teaching and the whole organization of the school, and its teachers, syllabus and textbooks in every branch, be regulated by the Christian spirit, under the direction and maternal supervision of the Church; so that religion may be in very truth the foundation and crown of the youth's entire training; and this in every grade of school, not only the elementary, but the intermediate and the higher institutions of learning as well. To use the words of Leo XIII: "It is necessary not only that religious instruction be given to the young at certain fixed times, but also that every other subject taught, be permeated with Christian piety."

And let no one say that in a nation where there are different religious beliefs, it is impossible to provide for public instruction otherwise than by neutral or mixed schools. In such a case it becomes the duty of the State, indeed it is the easier and more reasonable method of procedure, to leave free scope to the initiative of the Church and family, while giving them such assistance as justice demands.<sup>89</sup>

---

<sup>87</sup>Fichter, op. cit., p. 77.

<sup>88</sup>Roy J. Deferrari (ed.), Essays on Catholic Education in the United States (New York: Books for Libraries Press, 1969), p. 20.

<sup>89</sup>Seven Great Encyclicals (Glen Rock, New Jersey: Paulist Press, 1963), pp. 60-61.

To the extent that scholars and the Catholic hierarchy are able to describe or define policy, the foregoing quotations may be accepted as answers to the hypothetical question previously posed: "Is the religious dogma of the Church intended to be inseparable from education within Catholic schools?"

CHAPTER III

FEDERAL AND STATE PROVISIONS

FOR THE SEPARATION OF

CHURCH AND STATE

CHAPTER III  
FEDERAL AND STATE PROVISIONS  
FOR THE SEPARATION OF  
CHURCH AND STATE

In one manner or another the federal government and all state governments have made law, provisions which guard against the intermingling of the state with the church. The federal constitutional provisions are less specific and more comprehensive than those of most states; and, being the supreme laws of the land, the federal provisions act as a check upon the various states.

I. FEDERAL PROVISIONS

Two provisions, so-called the "establishment of religion" and the "free exercise" clauses are embodied in the first article of the Bill of Rights. The First Amendment reads:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.<sup>1</sup>

The Amendment is catholic in nature and not specifically termed to outlaw, for example, the expenditure of public funds for parochial schools. However, the problem to be solved was the broad relationship between religion and government. Maryland's highest court has said that:

---

<sup>1</sup>U. S. Constitution, "Bill of Rights," Amendment I.

. . .the problem to be considered and solved when the First Amendment was proposed was one of blunt and stark reality, which had perplexed and plagued the nations of Western Civilization for some 14 centuries, and during that long period, the union of Church and State in government of man had produced neither peace on earth, nor good will to man.<sup>2</sup>

The meaning of the "free exercise" clause of the First Amendment has generated little controversy: "no law shall prohibit the free exercise of religion." The "establishment of religion" clause, however, was only clarified in 1947; then, the United States Supreme Court had this to say:

The "establishment of religion" clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any religious activities or instructions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa. In the words of Jefferson, the clause against establishment of religion by law was intended to erect "a wall of separation between Church and State."<sup>3</sup>

Indeed, it was only seven years prior to the Court's statement that the "absorption" theory was accepted: that the guarantees of the First Amendment were absorbed by the Fourteenth Amendment, and thereby extended to the citizens of the states. Before 1940 it was assumed, not without some justification, that only Congress was bound by the establishment

---

<sup>2</sup>Horace Mann League v. Board of Public Works, 242 Md. 645 (1966).

<sup>3</sup>Everson v. Board of Education, 330 U. S. 1 at 15 (1947).



clause, and that the states were not so bound. At least three lines of logic have been used to support that supposition. First, if the establishment clause is taken literally, then it is conceptually impossible for the absorption theory to work. This is so because the Fourteenth Amendment, while necessitated by the absorption theory, is in itself a law respecting an establishment of religion; it would, therefore, ipso facto violate the First Amendment. Furthermore, when the First Amendment was passed, there then existed established churches in the various newly-formed states, and there is no evidence that the Framers of the Constitution intended the First Amendment to disestablish the existing official state religions.

Second, it has been suggested that the liberties guaranteed by the Fourteenth Amendment cannot include the establishment clause, because that clause does not deal with the protection of a "freedom" of individuals.

Third, it has been argued that the Framers of the Fourteenth Amendment never intended the Amendment to absorb the First Amendment. The argument is based on this reasoning: seven years after the passage of the Fourteenth Amendment, the 44th Congress, including 24 of the Framers of the Fourteenth Amendment, debated the Blaine Amendment--which would have prohibited the states from making laws respecting the establishment or free exercise of religion. That amendment passed the House of Representatives by 180--7 but failed to gain the needed two-thirds vote in the Senate.<sup>4</sup> It is claimed, therefore, that this amendment would have

---

<sup>4</sup>U. S. Congressional Record, 44th Cong., 1st Sess., (1875), IV, 5189-5191.

been considered altogether superfluous, if the Fourteenth Amendment had already absorbed the First Amendment.

But those speculations are largely academic now, since in 1940 the Supreme Court ruled that the federal and state governments have the same relationship to religion.<sup>5</sup>

The Fourteenth Amendment has since been held by the Court to assure to the citizens of the states all First Amendment rights. The Fourteenth Amendment reads:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.<sup>6</sup>

## II. STATE PROVISIONS

State provisions dealing with the separation of church and state were nearly always drafted in the name of God. The many state constitutions protect religion and the churches as they build higher the wall of separation. Nothing there is found to be hostile to religion, however, and the courts do not advocate hostility. The Supreme Court has said:

We are a religious people whose institutions presuppose a Supreme Being. We guarantee the freedom to worship as one chooses. We make room for as wide a variety of beliefs and creeds as the spiritual needs of men deems necessary. . .we find

---

<sup>5</sup>Cantwell v. Connecticut, 310 U. S. 296 (1940).

<sup>6</sup>U. S. Constitution, Amendment XIV.

no constitutional requirement which makes it necessary for government to be hostile to religion, and to throw its weight against efforts to widen the effective scope of religious influence.<sup>7</sup>

Therefore, while most states have clauses which separate the secular activities of the government from the sectarian functions of the church, the preambles to many constitutions reflect a reliance upon God. Table I shows the 45 states which have preambles as well as the preambles which invoke the favor of God or express gratitude to God. All state preambles are presented in Appendix B.

Delaware's preamble simply says that "through Divine goodness, all men have by nature the rights of worshiping and serving their Creator according to the dictates of their consciences. . . ." Georgia's preamble points to the people's reliance ". . . upon the protection and guidance of Almighty God. . . ." And Tennessee's preamble does not mention the word God, rather Section 3 of the State's Declaration of Rights stipulates that ". . . all men have a natural and indefeasible right to worship Almighty God. . . ."

Five states have no preambles: New Hampshire, Ohio, Oregon, Vermont, and Virginia. Each has a section in the constitution which recognizes God. For example, Article 5 of New Hampshire's Bill of Rights states that "every individual has a natural and inalienable right to worship God according to the dictates of his own conscience, and reason. . . ." Section 16, Article I, of Virginia's Bill of Rights reads:

Religious freedom.--That religion or the duty which we owe to our Creator, and the manner of discharging it, can be

---

<sup>7</sup>Zorach v. Clauson, 343 U. S. 306 at 314 (1952).

STATES WITH PREAMBLES: WHICH  
PREAMBLES INVOKE GOD'S  
FAVOR OR EXPRESS  
GRATITUDE

States with preambles	Invoke God's favor	Express Gratitude
Alabama	x	
Alaska		x
Arizona		x
Arkansas	x	x
California	x	x
Colorado	x	x
Connecticut		x
Delaware		
Florida	x	x
Georgia		
Hawaii		x
Idaho	x	x
Illinois	x	x
Indiana		x
Iowa	x	x
Kansas		x
Kentucky	x	x
Louisiana	x	x
Maine	x	x
Maryland		x
Massachusetts	x	x
Michigan	x	x
Minnesota	x	x
Mississippi	x	x
Missouri		x
Montana		x
Nebraska		x
Nevada	x	x
New Jersey	x	x
New Mexico		x
New York	x	x
North Carolina	x	x
North Dakota		x
Oklahoma	x	
Pennsylvania	x	x
Rhode Island	x	x
South Carolina		x
South Dakota		x
Tennessee		x
Texas	x	
Utah		x
Washington		x
West Virginia		x
Wisconsin	x	x
Wyoming	x	x

directed only by reason and conviction, not by force or violence; and, therefore, all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practice Christian forbearance, love and charity towards each other.<sup>8</sup>

In addition to expressing gratefulness to God and to invocations for God's blessings, the various preambles express hopes for a more perfect government, recognize the privilege of choosing and forming their own government, set forth the desire to insure tranquillity, and demonstrate the willingness to transmit to posterity all that is sought. The following preamble from the constitution of Massachusetts encapsulates most of the features of the other states:

#### MASSACHUSETTS

##### Preamble

The end of the institution, maintenance, and administration of government is to secure the existence of the body politic, to protect it, and to furnish the individuals who compose it with the power of enjoying in safety and tranquillity their natural rights, and the blessings of life; and whenever these great objects are not obtained, the people have a right to alter the government, and to take measures necessary for their safety, prosperity and happiness.

The body politic is formed by a voluntary association of individuals: it is a social compact, by which the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good. It is the duty of the people, therefore, in framing a constitution of government, to provide for an equitable mode of making laws, as well as for an impartial interpretation, and a faithful execution of them; that every man may, at all times, find his security in them.

We, therefore, the people of Massachusetts, acknowledging with grateful hearts, the goodness of the great Legislator of the universe, in affording us, in the course of His providence, an opportunity, deliberately and peaceably, without fraud,

---

<sup>8</sup>Virginia, Constitution, Article 1, Section 16.

violence or surprise, of entering into an original, explicit, and solemn compact with each other; and of forming a new constitution of civil government, for ourselves and posterity; and devoutly imploring His direction in so interesting a design, do agree upon, ordain and establish the following Declaration of Rights, and Frame of Government, AS THE CONSTITUTION OF THE COMMONWEALTH OF MASSACHUSETTS.<sup>9</sup>

All state constitutions provide for the separation of church and state to some degree of specificity, though many state legislators are beginning to feel pressures from some groups for constitutional revisions which would eliminate such separation. Separation is accomplished in various ways. Typically there are prohibitions against one or more of the following: requiring attendance at religious worship; the establishment of religion; interference with freedom of worship or conscience; religious tests as a qualification for holding a public office, being a witness in a court, or being admitted to a public school; questions touching on matters of religious beliefs in any court; sectarian instruction in public schools; and requiring support for religious or sectarian institutions, or religious or sectarian schools.

Each section of all constitutional provisions which bear upon religious matters is presented in its entirety in Appendix B. Some prohibitions, for example, against requiring support for sectarian schools are mitigated by certain other constitutional or statutory provisions. For instance, several states have provisions allowing for the transportation "of all children" to schools. Those types of provisions are included in Chapter IV.

Table II shows 38 states with constitutional prohibitions against

---

<sup>9</sup>Massachusetts, Constitution, Preamble.

religious tests such as qualifications for holding a public office, being a witness, or being admitted to a public school. In addition to these specific prohibitions, several constitutions mention that voters and jurors shall not be disqualified on the basis of religious beliefs. Also, some states declare generally that there shall be no diminution of civil rights on account of religious beliefs.

The constitution of Pennsylvania would question the office-holder's belief in God: "No person who acknowledges the being of a God and a future state of rewards and punishment shall on account of his religious sentiments, be disqualified to hold any office or place of trust or profit under this Commonwealth."<sup>10</sup> Furthermore, Pennsylvania does not specifically prohibit religious tests. Likewise, South Carolina is silent on the subject of religious qualifications, except to say that "no person who denies the existence of a Supreme Being shall hold any office under this Constitution."<sup>11</sup> To the contrary, Tennessee prohibits religious tests in addition to denying State offices to atheists.

Arizona is typical of the constitutional prohibitions against religious tests for holding public office and for being a witness: "No religious qualification shall be required for any public office or employment, nor shall any person be incompetent as a witness or juror in consequence of his opinion on matters of religion. . . ."<sup>12</sup> And Colorado's is similar to other state constitutional prohibitions against religious tests for admittance to public schools: "No religious test or qualifi-

---

<sup>10</sup>Pennsylvania, Constitution, Article I, Section 4.

<sup>11</sup>South Carolina, Constitution, Article XVIII, Section 4.

<sup>12</sup>Arizona, Constitution, Article II, Section 12.

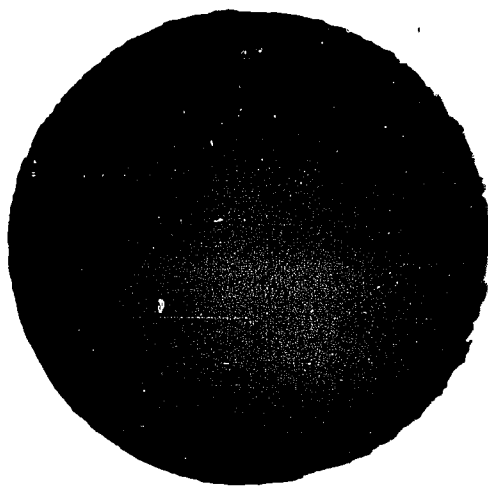




TABLE II

STATE PROHIBITIONS AGAINST RELIGIOUS TESTS  
AS QUALIFICATIONS FOR: HOLDING A  
PUBLIC OFFICE, BEING A WITNESS,  
BEING ADMITTED TO A  
PUBLIC SCHOOL

States	Holding a Public Office	Being a Witness	Admission to a Public School
Alabama	x		
Arizona	x	x	x
Arkansas	x	x	
California		x	
Colorado	x		
Delaware	x		
Florida		x	
Georgia	x		
Idaho	x		x
Illinois	x		
Indiana	x	x	
Iowa	x	x	
Kansas	x	x	
Louisiana	x		
Maine	x		
Maryland	x		
Michigan	x		
Minnesota	x		
Mississippi	x		
Missouri	x		
Montana	x		x
Nebraska	x	x	x
Nevada		x	
New Jersey	x		
New Mexico			x
New York		x	
North Dakota		x	
Ohio	x	x	
Oklahoma	x		
Oregon	x	x	
Rhode Island	x		
South Dakota	x		
Tennessee	x		
Texas	x	x	
Utah	x	x	x
Washington	x	x	
Wisconsin	x	x	
Wyoming	x	x	

cation shall ever be required of any person as a condition of admission into any public educational institution of the state, either as teacher or student. . . ."13

As shown in Table III, 46 states prohibit interference with the free exercise of worship or conscience. Most states equate freedom of worship with liberty of conscience; and where this equation was evident, only "freedom of worship" was checked. The difference is that the states treat "freedom of worship" as the freedom to worship God in any mode; whereas, liberty of conscience may lead one to worship or not to worship God. Thus, Arkansas has declared that "all men have a natural and in-defeasible right to worship Almighty God according to the dictates of their own consciences. . . ."14 But "no human authority can, in any case or manner whatsoever, control or interfere with the right of conscience."15 Only 15 states formally recognized the liberty of conscience as distinct from the freedom to worship. However, Virginia's and West Virginia's constitutions were silent on the subject of freedom to worship but recognized liberty of conscience. Virginia has said that ". . .all men shall be free to profess and by argument to maintain their opinions in matters of religion. . . ."16 Maryland as well as Massachusetts have opening clauses in their constitutions stating that it is the "duty" of every man to worship God; these clauses are probably of doubtful validity now.

Nineteen states have clauses designed to insure that freedom of religion does not allow for the destruction of the peace. Georgia's is

---

13Colorado, Constitution, Article IX, Section 8.

14Arkansas, Constitution, Article II, Section 24.

15Ibid. 16Virginia, Constitution, Article IV, Section 58.

STATE PROHIBITIONS AGAINST INTERFERENCE  
WITH FREEDOM OF WORSHIP  
OR CONSCIENCE

States	Freedom of Worship	Freedom of Conscience
Alabama	x	
Arizona	x	
Arkansas	x	x
California	x	
Colorado	x	
Connecticut	x	
Delaware	x	x
Florida	x	
Georgia	x	
Idaho	x	
Illinois	x	
Indiana	x	
Kansas	x	
Kentucky	x	
Louisiana	x	
Maine	x	
Maryland	x	
Massachusetts	x	
Michigan	x	
Minnesota	x	x
Mississippi	x	
Missouri	x	x
Montana	x	
Nebraska	x	x
Nevada	x	
New Hampshire	x	
New Jersey	x	
New Mexico	x	
New York	x	
North Carolina	x	x
North Dakota	x	
Ohio	x	x
Oklahoma	x	
Oregon	x	x
Pennsylvania	x	x
Rhode Island	x	
South Dakota	x	
Tennessee	x	x
Texas	x	x
Utah	x	
Vermont	x	x
Virginia		x
Washington	x	
West Virginia		x
Wisconsin	x	x
Wyoming	x	

typical: ". . .the right of liberty of conscience shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace and safety of the State."<sup>17</sup> Two states, Idaho and New Mexico, have attached to their religious clauses provisions designed to prohibit polygamy and bigamy. Six other states have sought to insure that religious tolerance does not abridge the government's right to require oaths. Illinois has said that ". . .the liberty of conscience hereby secured shall not be so construed to dispense with oaths or affirmations."<sup>18</sup> Texas has outlined the mode of administering an oath: ". . .all oaths or affirmations shall be administered in the mode most binding upon the conscience, and shall be taken subject to the pains and penalties of perjury."<sup>19</sup>

Twenty-nine states prohibit required church attendance, and 34 states have clauses which preclude the establishment of any religion, denomination, or mode of worship. As seen in Table IV, ten states have neither of these proscriptions; those states are: Arizona, California, Georgia, Massachusetts, Nevada, North Carolina, Oklahoma, Oregon, Washington, and Wyoming. Massachusetts prohibits laws which would respect the "free exercise" of religion. And the other states have some type of substituting clause. North Carolina, for example, says that "all persons have a natural and inalienable right to worship Almighty God according to the dictates of their own consciences. . . ."<sup>20</sup>

---

<sup>17</sup>Georgia, Constitution, Article I, Section I, Paragraph XIII.

<sup>18</sup>Illinois, Constitution, Article II, Section 3.

<sup>19</sup>Texas, Constitution, Article I, Section 5.

<sup>20</sup>North Carolina, Constitution, Article I, Section 26.

TABLE IV

STATE PROHIBITIONS AGAINST REQUIRING  
CHURCH ATTENDANCE AND AGAINST  
THE ESTABLISHMENT OF RELIGION

States	Requiring Church Attendance	Establishment of Religion
Alabama	x	x
Alaska		x
Arkansas	x	x
Colorado	x	x
Connecticut	x	x
Delaware	x	x
Florida		x
Hawaii		x
Idaho	x	x
Illinois	x	x
Indiana	x	x
Iowa	x	x
Kansas	x	x
Kentucky	x	x
Louisiana		x
Maine		x
Maryland	x	
Michigan	x	
Minnesota	x	x
Mississippi		x
Missouri	x	x
Montana	x	x
Nebraska	x	x
New Hampshire		x
New Jersey	x	x
New Mexico	x	x
New York		x
North Dakota		x
Ohio	x	x
Pennsylvania	x	x
Rhode Island	x	
South Carolina		x
South Dakota	x	x
Tennessee	x	x
Texas	x	x
Utah		x
Vermont	x	
Virginia	x	
West Virginia	x	
Wisconsin	x	x

The clauses prohibiting required church attendance and the establishment of religion are usually situated in proximity to one another. New Mexico states that "no person shall be required to attend any place of worship or support any religious sect or denomination; nor shall any preference be given by law to any religious denomination or mode of worship."<sup>21</sup>

Finally, several states pattern their "no establishment" clause after the First Amendment to the Constitution of the United States. South Carolina has written:

The General Assembly shall make no law respecting an establishment of religion or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble and to petition the Government or any department thereof for a redress of grievances.<sup>22</sup>

Ten states have prohibited the dispensation of sectarian instruction in the public schools; those states are: Arizona, California, Colorado, Idaho, Montana, Nebraska, Nevada, South Dakota, Wisconsin, and Wyoming. To illustrate, Wyoming's constitution says:

No sectarian instruction, qualifications or tests shall be imparted, exacted, applied or in any manner tolerated in the schools of any grade or character controlled by the state, nor shall attendance be required at any religious service therein, nor shall any sectarian tenets or doctrines be taught or favored in any public school or institution that may be established under this constitution.<sup>23</sup>

In addition, five states (Arizona, Kansas, Mississippi, Ohio, and Utah) have stipulated that the schools and school funds of the state shall not

---

<sup>21</sup>New Mexico, Constitution, Article II, Section 11.

<sup>22</sup>South Carolina, Constitution, Article I, Section 4.

<sup>23</sup>Wyoming, Constitution, Article VII, Section 12.

fall under any sectarian control. Therefore, Washington has said, "all schools maintained or supported wholly or in part by the public funds shall be forever free from sectarian control or influence."<sup>24</sup>

Table V illustrates that only one state, Maine, had no clauses prohibiting the requirement of support for religious or sectarian institutions and schools. Forty-two state constitutions had provisions which either prohibited the requirement of support for religious institutions, or precluded the payment of any tax monies for such institutions. Thus, Michigan has said that "no person shall be compelled. . .to contribute to the erection or support of any place of religious worship, or to pay tithes, taxes or other rates for the support of any minister of the gospel or teachers of religion."<sup>25</sup> While Florida's constitution reads, ". . .no money shall ever be taken from the public treasury directly or indirectly in aid of any church, sect or religious denomination or in aid of any sectarian institution."<sup>26</sup> The words surrounding "institution" among the various constitutions describe: ministers, ministrys, places of worship, religious sects or creeds, universities and hospitals of particular sects and religious exercises. In addition to restrictions on the usage of tax funds, 19 states prohibit the granting of any personal property, received by contribution, for use by religious or sectarian institutions. For example, Colorado says, ". . .nor shall any grant or donation of land, money or other personal property, ever be made by the

---

<sup>24</sup>Washington, Constitution, Article IX, Section 4.

<sup>25</sup>Michigan, Constitution, Article I, Section 4.

<sup>26</sup>Florida, Constitution, Article I, Section 3.

STATE PROHIBITIONS AGAINST REQUIRING SUPPORT FOR  
RELIGIOUS OR SECTARIAN INSTITUTIONS AND  
RELIGIOUS OR SECTARIAN SCHOOLS

States	Religious or Sectarian Institutions	Religious or Sectarian Schools
Alabama	x	
Alaska		x
Arizona		x
Arkansas	x	x
California	x	x
Colorado	x	x
Connecticut	x	
Delaware	x	
Florida	x	
Georgia	x	
Hawaii	x	x
Idaho	x	x
Illinois	x	x
Indiana	x	
Iowa	x	
Kansas	x	
Kentucky	x	x
Louisiana	x	x
Maryland	x	
Massachusetts	x	x
Michigan	x	
Minnesota	x	x
Mississippi		x
Missouri	x	x
Montana	x	x
Nebraska	x	x
Nevada	x	
New Hampshire		x
New Jersey	x	
New Mexico	x	
New York		x
Ohio	x	
Oklahoma	x	
Oregon	x	
Pennsylvania	x	
Rhode Island	x	
South Carolina	x	x
South Dakota	x	
Tennessee	x	
Texas	x	
Utah	x	x
Vermont	x	
Virginia	x	x
Washington	x	x
West Virginia	x	
Wisconsin	x	
Wyoming	x	x



state, or any such public corporation, to any church, or for any sectarian purpose."<sup>27</sup> Virginia and West Virginia have stipulated that the General Assembly cannot allow the people to vote upon themselves a tax for the support of religious institutions:

And the General Assembly shall not. . . pass any law requiring or authorizing any religious society, or the people of any district within this State; to levy on themselves, or others, any tax for the erection or repair of any house of worship, or for the support of any church or ministry. . . .<sup>28</sup>

Twenty-three states specifically prohibit the use of public support in any fashion for religious or sectarian schools. Of the remaining 27 states, 16 have established school funds, and the constitutional provisions restrict those particular funds to the operation of public schools. That is, nothing is said about the use of unrestricted tax funds for the support of religious schools. Indiana is illustrative:

The principal of the Common School fund shall remain a perpetual fund, which may be increased, but never be diminished; and the income thereof shall be inviolably appropriated to the support of Common Schools, and to no other purpose whatever.<sup>29</sup>

New York's prohibition against aid to religious schools has been mislabeled the "Blaine" Amendment; the amendment has earned the reputation of being strict, and though it is in fact restrictive, it specifically allows the transportation of all children to and from schools. In 1969 a series of bills was introduced before the New York Legislature; they were designed to repeal the "Blaine" Amendment, but all failed to pass.<sup>30</sup>

---

<sup>27</sup>Colorado, Constitution, Article IX, Section 7.

<sup>28</sup>Virginia, Constitution, Article IV, Section 58.

<sup>29</sup>Indiana, Constitution, Article 8, Section 3.

<sup>30</sup>"Public Aid to Religiously Affiliated Schools--The Record of the State Legislatures in 1969," (New York: Commission on Law and Social Action of the American Jewish Congress, 1969), p. 11. (Mimeographed.)

California's constitution states that "no public money shall ever be appropriated for the support of any sectarian or denominational school, or any school not under the exclusive control of the officers of the public schools. . . ." <sup>31</sup> In 1969 two amendments to the above clause were introduced: Assembly Constitutional Amendment Number 27 would provide tuition grants to children in parochial schools from kindergarten through grade 12. And Assembly Constitutional Amendment Number 36 would provide to all pupils of the state tuition grants or vouchers redeemable by any private or public school meeting requirements prescribed by the Legislature. <sup>32</sup> Both bills failed to get out of committee in 1969.

The Constitution of Massachusetts cautions that:

. . . no grant, appropriation or use of public money or property or loan of public credit shall be made or authorized by the commonwealth or any political division thereof for the purpose of founding, maintaining or aiding any school or institution of learning, whether under public control or otherwise, wherein any denominational doctrine is inculcated. . . . <sup>33</sup>

Two amendments to the Massachusetts constitution have been approved by the Legislature: H.526 would authorize the payment of the salaries of teachers of private schools who do not teach sectarian subjects. And H.1037 would authorize grants in aid to private educational institutions. But before these measures can become law they must be approved again by the Legislators in the 1971-72 session, and then be presented for ratification in a public referendum. Also a commission (H.4930) has been approved to study such things as the federal and state constitutional

---

<sup>31</sup>California, Constitution, Article IX, Section 8.

<sup>32</sup>American Jewish Congress, op. cit., p. 3.

<sup>33</sup>Massachusetts, Constitution, Article XLVI, Section 2.

implications of using public funds for the support of religious schools.<sup>34</sup>

Hawaii's prohibition is brief: "There shall be no segregation in public educational institutions because of race, religion or ancestry; nor shall public funds be appropriated for the support or benefit of any sectarian or private educational institution."<sup>35</sup> Hawaii's Supreme Court has declared a statute authorizing transportation for parochial school students to be in violation of the state constitution. Following that declaration there was introduced an amendment to the constitution making transportation subsidies to parochial and private schools an exception. However the proposed amendment has so-far failed to get out of committee.<sup>36</sup>

Indiana's constitution simply states that "no money shall be drawn from the treasury, for the benefit of any religious or theological institution."<sup>37</sup> On August 12, 1968, a State Constitutional Revision Commission approved the addition of the following words--"for the promotion of religion."<sup>38</sup>

Finally, the Constitution of Virginia disallows the appropriation of public funds for schools not under the exclusive control of the state. In 1969, Joint Resolution 25 proposed an amendment to the constitution which would permit limited expenditures for nonpublic schools. Such strong opposition developed that in 1970 that amendment was dropped.<sup>39</sup>

---

<sup>34</sup>American Jewish Congress, op. cit., pp. 7-8.

<sup>35</sup>Hawaii, Constitution, Article IX, Section L.

<sup>36</sup>American Jewish Congress, op. cit., p. 4.

<sup>37</sup>Indiana, Constitution, Article I, Section 6.

<sup>38</sup>"Constitutional Revision--The Greatest Peril of All," Church & State, XXII (September, 1969), 7.

<sup>39</sup>"Virginia Keeps Religious Freedom," Church & State, XXIII (April, 1970), 3.

CHAPTER IV

A STUDY OF FEDERAL AND STATE CONSTITUTIONAL AND STATUTORY  
PROVISIONS PERMITTING THE USE OF PUBLIC FUNDS  
FOR RELIGIOUS SCHOOLS

CHAPTER IV  
A STUDY OF FEDERAL AND STATE CONSTITUTIONAL AND STATUTORY  
PROVISIONS PERMITTING THE USE OF PUBLIC FUNDS  
FOR RELIGIOUS SCHOOLS

The clamor for public aid for parochial schools is growing louder, and despite a vigorous counter-attack from defenders of the separation-of-church-and-state principle, dollars are beginning to flow rapidly.

Thirty-six states now provide some assistance to parochial schools. "Federal assistance, almost nil before 1965, is estimated to have totaled \$250-million in the last five years."<sup>1</sup> It is proper to look into the federal and state laws from which such funds flow.

I. FEDERAL AID TO PAROCHIAL SCHOOLS

Prior to 1965 massive federal-aid-to-education bills were opposed by an extremely unlikely coalition. Northern liberals who were in opposition to federal aid to segregated school systems, and Southern conservatives who balked at the idea of federal aid to parochial schools, combined repeatedly to defeat educational legislation. Between 1946 and 1965 a total of fourteen proposals for various sorts of general educational aid were defeated.

By 1964 the segregation drawback was effectively forestalled since Title VI of the Civil Rights Act of 1964 precluded discrimination on the

---

<sup>1</sup>Associated Press dispatch, New York Times, October 17, 1970.

basis of race wherever federal assistance was provided. It has been said, however, that in regard to assistance to parochial schools, the real power of the act resides in what it does not say. Section 601 reads:

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.<sup>2</sup>

It has been noted that the act is conspicuously silent with respect to discrimination on the basis of religion.

The following year, 1965, saw, at least administratively speaking, a way around the remaining impasse. On January 12, 1965, President Johnson sent an educational message to Congress which attacked the issue of federal aid to parochial schools in a new manner. Approaching indirectly, President Johnson spoke of economically and educationally disadvantaged children. The stress was placed on aid to individual students, and not to church-related schools: ". . .I urge that we now push ahead with the number one business of the American people--the education of our youth in pre-schools, elementary and secondary schools, and in the colleges and universities."<sup>3</sup> On April 11, 1965, the "Elementary and Secondary Education Act of 1965" was passed into law. This act releases assistance to parochial schools in at least fifteen different forms, though nowhere are the words parochial or church-related schools found.

Before 1965 there existed six acts providing some assistance to elementary and secondary parochial schools: Servicemen's Readjustment Act

---

<sup>2</sup>Public Law 88-352, Section 601.

<sup>3</sup>"President Calls for Broad Elementary, Secondary and College Educational Aid Programs," Congressional Quarterly Almanac, XXI (Washington, D. C.: Congressional Quarterly Service, 1965), p. 1374.

of 1944, National School Lunch Act of 1946, Federal Property and Administration Services Act of 1949, Agriculture Act of 1954, National Defense Education Act of 1958, and the Economic Opportunity Act of 1964.

National School Lunch Act of 1946

By this act both grants-in-aid and surplus food are made available to state agencies, through the Department of Agriculture, for the establishment of nonprofit school-lunch programs. "Such meals shall be served without cost or at a reduced cost to children who are determined by local school authorities to be unable to pay the full cost of the lunch."<sup>4</sup>

Wherever state laws forbid the disbursement of federal funds to nonprofit private schools, the Secretary of the Department of Agriculture is authorized to deal directly with such schools.

Federal Property and Administration Services Act of 1949

This act authorizes the Administrator of General Services to donate for educational purposes to tax-supported school systems and "to other non-profit schools" such things as materials, books, buildings, fixtures, equipment, supplies, and other surplus property.

Agriculture Act of 1954

Since 1954, under the administration of the Commodity Credit Corporation, funds have been distributed to participating nonprofit schools to increase the consumption of fluid milk.

By amendment (P. L. 84-752), milk may now be distributed to "children in the United States in (1) nonprofit schools of high school grade

---

<sup>4</sup>Public Law 79-396, Section 9.

and under, and (2) nonprofit nursery schools, child-care centers, settlement houses, summer camps, and similar nonprofit institutions devoted to the care and training of children."

#### National Defense Education Act of 1958

The Commissioner of Education may make loans to nonprofit elementary and secondary schools for the ". . .acquisition of laboratory and other special equipment, including audio-visual materials and equipment and printed materials (other than textbooks) suitable for providing education in science, mathematics or modern foreign language."<sup>5</sup> In addition, funds are available for the minor remodeling of laboratories. A later amendment (P. L. 88-665) allows funds to be spent in history, civics, geography, economics, industrial arts, and English or reading.

Title V, if authorized by state law, would provide private secondary schools with programs of guidance and counseling to ". . .advise students of courses of study best suited to their ability, aptitudes and skills, and. . .to encourage students with outstanding aptitudes and ability to complete their secondary school education. . ." and to become equipped to enter college.<sup>6</sup> Subsequent amendment (P. L. 88-665) extended this benefit to private elementary schools.

#### Economic Opportunity Act of 1964

By amendment (P. L. 89-253) grants may be made directly to private nonprofit schools for the purpose of funding community action programs.

---

<sup>5</sup>Public Law 85-864, Section 303.

<sup>6</sup>Public Law 85-864, Section 503.



These programs are designed to eliminate educational deficiencies caused by poverty, and to entail remedial education projects.

In addition, Title VIII of an amending act (P. L. 89-794) allows VISTA volunteer workers to assist private schools in programs aimed at eradicating educational deficiencies caused by poverty.

Most of the acts thus far contribute relatively insignificant amounts to parochial schools: "The major breakthrough for private schools came with the passage of the Elementary-Secondary Education Act of 1965, which funnelled millions of dollars into parochial schools through Federal programs."<sup>7</sup>

#### Elementary and Secondary Education Act of 1965\*

Section 205 of Title I-ESEA-1965 provides funds for programs of dual enrollment in which elementary and secondary students of private schools may participate. In addition, for the purposes of remedial instruction, such equipment as educational radio, television sets, and other mobile educational equipment, may be used on the premises of private schools.

Section 203 of Title II-ESEA-1965 authorizes money to be spent for the,

. . . acquisition of library resources (which for the purposes of this title means books, periodicals, documents, audio-visual

---

<sup>7</sup>Associated Press dispatch, New York Times, October 17, 1970.

\*Title I of ESEA-1965 merely incorporated Title I of an earlier law (P. L. 81-874); in addition, Title II of P. L. 81-874 was revised (to include provisions for public and private school children of low-income families), and also incorporated as part of Title I of ESEA-1965; therefore, as an example--Section 201, unless specified as being a section of Title II-ESEA-1965, would refer to Title I-ESEA-1965.

materials, and other related library materials), textbooks, and other printed and published instructional materials for the use of children and teachers in public and private elementary and secondary schools in the State. . . .<sup>8</sup>

Materials are limited to those which have been approved for use in the state's public schools. Ownership of all materials must be vested in a public agency.

Title III offers a number of services to public and other nonprofit schools. Included among the services offered are guidance and counseling, remedial instruction, health and physical education programs, recreational programs, psychological services, educational equipment, and the talents of a variety of specially qualified personnel. Money is made available to states for the construction and maintenance of centers through which such services are extended to the schools.

#### Higher Education Act of 1965

Under Section 408, contracts may be made with public and nonprofit institutions to establish programs for the purposes of:

1. identifying qualified youths of exceptional financial need and encouraging them to complete secondary school and undertake postsecondary educational training,
2. publicizing existing forms of student financial aid, including aid furnished under this part, or
3. encouraging secondary-school or college dropouts of demonstrated aptitude to reenter educational programs, including post-secondary-school programs.<sup>9</sup>

Title V allows either experienced teachers, or teaching teams, drawn from the Teacher Corps, to be used in the schools of local educational agencies.

---

<sup>8</sup>Public Law 89-10, Section 203, Title II.

<sup>9</sup>Public Law 89-329, Section 408.

### Veteran's Readjustment Benefits Act of 1966

According to this act, any veteran having served on active duty in the Armed Forces for 180 days or more since January 31, 1955, is entitled to educational assistance. Each veteran is able to receive a subsistence allowance for each month of his service up to 36 months. The veteran may enroll at any school, public or private, as long as it furnishes education at the secondary level or above.

From 1944 until 1955, the Servicemen's Readjustment Act of 1944 (P. L. 78-346) served essentially the same purpose as this act, except that it provided funds for elementary education as well.

### Child Nutrition Act of 1966

This act provides funds for a breakfast program for needy children. Funds are paid to the state, and schools are reimbursed by the state for the cost of obtaining agriculture products for the breakfast programs. In addition, the costs of processing, distributing, transporting, storing, and handling the food is reimbursable.

Where states are prohibited by law from distributing federal funds to private schools, the Secretary of the Department of Agriculture may deal directly with them.

Table VI lists the federal acts that have been covered as well as the assistance they provide to private nonprofit, including parochial schools.

## II. STATE AID TO PAROCHIAL SCHOOLS

Notwithstanding the many state constitutional strictures in America, there are today 33 states with 83 laws making public assistance available

TABLE VI

FEDERAL ACTS AND TYPES OF ASSISTANCE TO  
ELEMENTARY AND SECONDARY  
RELIGIOUS SCHOOLS

79

Types of Assistance	Federal Acts National School Lunch Act of 1946	Federal Proper- ties and Ad- ministration Services Act of 1949	National Science Foundation Act of 1950	Agriculture Act of 1954	NDEA of 1958	Economic Oppor- tunity Act of 1964	Higher Education Act of 1965	ESEA of 1965	Veteran's Read- justment Bene- fits Act of 1966
Dual Enrollment									x
Movie Projectors									x
Television Sets									x
Teacher Aides*									x
Books		x							x
Textbooks									x
Periodicals									x
Audio-visual Materials									x
Documents									x
Other Printed and Published Instructional Materials									x
Guidance and/or Counseling			x						x
Health Programs									x
Physical Education Programs									x
Psychological Services									x
Other Special Curriculum Programs					x			x	
Loans for Remodeling Laboratories					x				
Testing Programs to Identify Students of Outstanding Aptitudes					x		x		
Buildings		x							
Building Fixtures		x							
School lunches**	x								
Milk				x					
Breakfasts**									
Cafeteria Equipment									
Experienced Teachers*							x		
Teaching Teams*							x		
Grants to Establish Remedial Education Programs						x			
Volunteer VISTA Workers*						x			
Pay to Certain Students to Cover Secondary Education Costs									x
Building Materials and Equipment		x							

\*\*=for work in remedial areas

\*\*=for needy children

to elementary and/or secondary parochial schools or parochial school students.

Most parochial-aid laws offer only fringe-type concessions such as transportation, books, lunches, and health services. Some of these laws, though approved by the United States Supreme Court, may be questionable under their respective state constitutions. Many state legislators are aware of the binding powers of their state constitutions, and have, therefore, sought the direct support of the voters through referenda. Other legislatures have preferred to pass highly controversial parochial-aid bills into law, and to accept the judgment of the courts. The laws currently producing the keenest debate are the purchase of services acts, and others approaching direct aid to parochial schools.

Table VII identifies the states which have enacted into law either purchase-of-secular-educational-services acts or other acts providing direct financial aid to elementary and secondary parochial schools.

#### Purchase of Secular Educational Services Laws

Connecticut's Nonpublic School Secular Education Act pays twenty percent of the salaries of nonpublic school teachers who teach secular subjects. Secular subjects are considered to be any course found in the curricula of public schools. In addition, the act pays toward the purchase of books for nonpublic school students. Funds for these forms of assistance must come from sources other than the general school fund, since the state constitution restricts the use of money from this fund to the public schools.

In order to receive funds under the act, nonpublic schools must within three years from the date of the act, submit for reimbursement only

TABLE VII

STATES WITH PURCHASE OF SECULAR  
EDUCATIONAL SERVICES LAWS AND  
OTHER DIRECT AID LAWS

States	Purchase of Services Laws	Other Direct Aid
Connecticut	x	
Hawaii		x
Louisiana	x	
Michigan	x	
Mississippi		x
Ohio	x	
Pennsylvania	x	
Rhode Island	x	
Vermont		x

the names of teachers who have met the same certification requirements as public school teachers; use textbooks approved of by the State Secretary of the State Board of Education; provide secular educational courses required by law; meet adequate safety, sanitary, and construction requirements; and comply with Title VI of the 1964 Civil Rights Act. Provision is made for the Secretary to inspect every nonpublic school applicant in order to be assured that the schools comply with the requirements of the act.

Since the promulgation of the act, a federal district court has held that it violates the First Amendment of the Federal Constitution. The case has since been appealed directly to the United States Supreme Court.

The Louisiana State Constitution prohibits the use of public funds for any "private or sectarian school." Therefore, Louisiana's Secular Educational Services Act pays salaries directly to the private school teachers, and not to the school. Unlike Connecticut's act, Louisiana's act pays the total cost of such teachers' salaries. But like Connecticut, the Louisiana act has been held unconstitutional. The Supreme Court of Louisiana found that the act violated the spirit of the state constitution.

Ohio has an auxiliary services act which, among other things, provides tax funds for contracts between individual school districts and lay teachers of secular services in private, non-profit schools. The amount of salary paid to a particular teacher is based upon the percentage of full-time service such teacher devotes to instruction in secular subjects.

Schools receiving funds under this act are required to implement programs to evaluate pupil achievement, and to make these results available to the Ohio Superintendent of Public Instruction.

An Ohio State Court has upheld the act, but it is under continued court challenge as the plaintiffs have now appealed the case to a higher court.

Rhode Island's Salary Supplements To Nonpublic Schoolteachers Act pays 15 percent of nonpublic school teachers' salaries where those teachers teach secular subjects such as those found in the public schools. Likewise, this act has been found by a three-judge federal district court to violate the First Amendment of the Federal Constitution. The case has been appealed to the United States Supreme Court, and the Court has agreed to render a decision.

Michigan's auxiliary services act pays for 50 percent of the salaries of nonpublic school teachers who teach secular subjects. After the school year 1971-72, the amount paid will be increased to 75 percent. The Michigan State Supreme Court has upheld the law, and, at present, no appeal has been filed.

Pennsylvania's Nonpublic Elementary and Secondary Education Act is considered as the prototype for other similar laws. The law provides funds for the total salaries of nonpublic teachers teaching secular subjects; for approved textbooks; and for instructional materials (books, periodicals, documents, pamphlets, photographs, reproductions, pictorial or graphic works, musical scores, maps, charts, globes, sound recordings, including but not limited to those on discs, and tapes; processed slides, transparencies, films, filmstrips, kinescopes, and video tapes, or any other printed and published materials of a similar nature).<sup>10</sup>

---

<sup>10</sup>Pennsylvania, Public Laws of Pennsylvania--1968, Act 109.



Money for such expenditures is drawn from a fund especially created for the act. Revenues for the fund are proceeds from horse and harness racing conducted in the state.

A three-judge federal district court has by a two-judge majority upheld the Pennsylvania law, but it has been appealed to the United States Supreme Court and has been accepted for adjudication by that Court.

#### Other Direct Aid Laws

The other state laws which appropriate direct aid to parochial schools include Hawaii's tax credit act, Mississippi's student loan law, and Vermont's law which pays for the tuition of private school children of elementary and secondary schools.

Hawaii's law makes tax credits available to the parents of all students, and it is adjusted to offer greater relief to the lower income taxpayers.

Under Mississippi's law, private school students can borrow up to \$200 a year for a maximum amount of \$2400. If upon graduation the recipient continues to live in the state, the loan is forgiven at the rate of \$100 a year for up to five years. If the recipient continues to live in the state and attends a Mississippi institution of higher education, the loan is forgiven at the rate of \$200 per year. If the recipient teaches in Mississippi, the loan is forgiven at the rate of \$400 per year. This law is now being challenged in a United States District Court.

Vermont's law pays for the tuition of private school pupils up to an amount equal to the average cost of a comparable year of public school education.

### Shared-time and Driver Education Laws

Table VIII shows which states engage in shared-time or provide driver education courses to parochial elementary and/or secondary schools.

Shared-time is an arrangement whereby the usual procedure is for parochial school students to go to public schools for specific courses, and then return to their respective schools. The courses taken normally involve expensive equipment that the parochial school is unable to afford. Parochial schools are highly academic-oriented.

Connecticut's shared-time law is incorporated in its purchase-of-services act. Section 16 reads:

The secretary shall encourage boards of education of public schools and governing boards of nonpublic schools to share facilities and personnel on a voluntary basis. No public school teachers shall be required to teach in a nonpublic school.<sup>11</sup>

Most states, however, derive the authorization for shared-time or dual enrollment from laws pertaining to the apportionment of funds based on average daily attendance. Illinois' law, for example, states: "Pupils regularly enrolled in a public school for only a part of the school day may be counted on the basis of 1/6 day for every class hour attended pursuant to such enrollment."<sup>12</sup>

Colorado allows for shared-time through its law that accepts federal funds for private school purposes. Kentucky has permissive legislation only, leaving shared-time arrangements to the discretion of local boards.

---

<sup>11</sup>Connecticut, Public Acts--Connecticut--1969, Act 791-69, section 16.

<sup>12</sup>Illinois, Smith-Hurd Illinois Annotated Statutes, Chapter 122, section 18-8, 1 (a).

TABLE VIII

STATES WHICH MAKE SHARED-TIME OR  
DRIVER EDUCATION AVAILABLE TO  
ELEMENTARY AND/OR SECONDARY  
PAROCHIAL SCHOOLS

States	Shared-time	Driver Education
California		x
Colorado	x	
Connecticut		x
Delaware		x
Illinois	x	x
Iowa	x	x
Kentucky	x	
Michigan	x	x
Minnesota	x	x
Mississippi		x
New Hampshire	x	x
Ohio		x
Oregon		x
Pennsylvania	x	x
Rhode Island	x	
South Dakota		x
Utah		x
Vermont		x
Washington	x	
Wisconsin		x

Drivers education, wherever available to private school students, is usually conducted in public high schools only. Michigan's law states that: "such courses must be conducted by the local public school district, but enrollment shall be open to high school students who are enrolled in private or parochial schools in the public school district."<sup>13</sup>

Iowa's authorization for conducting driver education courses for parochial schools is taken from an omnibus law which makes most special educational services carried out in public schools available to nonpublic schools. While South Dakota does not cover much of the cost of driver education courses, it offers equal assistance to public and private schools.

#### Transportation and Textbooks

Table IX indicates the states which provide parochial elementary and/or secondary school students with transportation and textbooks.

Nine states loan textbooks to nonpublic including parochial school students. Most state laws seek some type of guarantee that the books loaned will not be religiously oriented in order that they may not be used to advance religious ideologies. New York's law specifies:

Textbooks loaned to children enrolled in grades seven to twelve of said private schools shall be textbooks which are designated for use in any public, elementary or secondary schools of the state or are approved by any boards of education, trustees or other school authorities.<sup>14</sup>

New York's textbook law has been challenged in court, and in 1968 the Supreme Court of the United States, in the case of Board of Education v.

---

<sup>13</sup>Michigan, Public and Local Acts Michigan, 1955, 1st extra session, Act 1.

<sup>14</sup>New York, McKinney's Consolidated Laws of New York Annotated 1970, Book 16, section 701.

TABLE IX

STATES WHICH MAKE TRANSPORTATION AND/OR  
TEXTBOOKS AVAILABLE TO ELEMENTARY  
AND/OR SECONDARY PAROCHIAL  
SCHOOLS

States	Transportation	Textbooks
California	x	x
Colorado	x	
Connecticut	x	x
Delaware	x	
Illinois	x	
Indiana	x	x
Kansas	x	
Kentucky	x	
Louisiana	x	x
Maine	x	
Maryland	x	
Massachusetts	x	
Michigan	x	
Minnesota	x	
Mississippi		x
Montana	x	
New Hampshire	x	
New Jersey	x	
New York	x	x
North Dakota	x	
Ohio	x	
Oregon	x	
Pennsylvania	x	x
Rhode Island	x	x
West Virginia	x	x
Wisconsin	x	

Allen, 392 U. S. 236 (1968), ruled by a six-to-three decision that the New York law was not a violation of the First Amendment.

Prior to the New York case, the Supreme Court ruled, in the case of Cochran v. Louisiana State Board of Education, 281 U. S. 370 (1930), that the Louisiana textbook law was not in violation of the Fourteenth Amendment, and in the process, enunciated the famous "child-benefit theory."

Indiana and West Virginia only loan textbooks to parochial school students where the students are too poor to pay for them.

Twenty-five states have laws which make transportation available to parochial school students. Most state laws limit such transportation to nonpublic school students living along the school bus route. That is, no new routes are established for the purpose of transporting nonpublic school students. The law of Kansas is illustrative:

. . . (P)upils residing in such school districts attending private or parochial schools of elementary and high school grades which are approved by the state board of education. . . shall be entitled to the privilege of such school-bus transportation upon such regular route as arranged for the benefit of pupils attending public schools.<sup>15</sup>

In 1947 the United States Supreme Court, in the case of Everson v. Board of Education, 330 U. S. 1 (1947), upheld New Jersey's transportation law which allows parents to be reimbursed by tax money for the cost of transporting pupils to parochial schools.

Kentucky's transportation law is framed in permissive language. Maryland does not have a state law, rather special enabling legislation

---

<sup>15</sup>Kansas, Kansas Statutes Annotated, V, section 72-619.

has been passed for 13 of the 24 school systems of the state. Finally, Montana only transports nonpublic students where the parent agrees to pay the proportionate cost.

### Lunches and Health Services

Table X shows the states which have special legislation designed to provide nonpublic including parochial schools, with lunches and health services.

Although some states make state tax funds available for financing lunch programs of nonpublic schools, most have included laws which accept federal funds for that purpose. In states where such laws are absent, parochial schools deal directly with the federal government, bypassing the state. Oregon's law under Lunch Programs says:

The Superintendent of Public Instruction may accept and distribute donated commodities available for either public or private nonprofit educational institutions, subject to state or federal law or regulation relating to such acceptance and distribution.<sup>16</sup>

Seven states have passed special legislation to equalize health services in public and nonpublic schools. Some laws, however, set forth in detail which services shall be provided to nonpublic schools. Kansas, for example, provides only hearing checks, whereas Connecticut provides a range of services:

Such health and welfare services shall include the services of a school physician, nurse and dental hygienist, school psychologist, speech remedial services, school social worker's services, special language teachers for non-English speaking students and such similar services as may be provided by said town to children in attendance at public schools.<sup>17</sup>

---

<sup>16</sup>Oregon, Oregon Revised Statutes, III, section 327.520.

<sup>17</sup>Connecticut, Public Acts--Connecticut, special session, 1965, regular session, 1967, Act 481.

TABLE X

STATES WHICH MAKE LUNCHES AND/OR HEALTH  
SERVICES AVAILABLE TO ELEMENTARY AND/OR  
SECONDARY PAROCHIAL SCHOOLS

States	Lunches	Health Services
California	x	
Connecticut		x
Illinois	x	
Iowa		x
Kansas		x
Louisiana	x	
Michigan		x
Mississippi		x
Missouri	x	
New Hampshire		x
New York		x
Oregon	x	
Pennsylvania	x	
Rhode Island	x	



### Miscellaneous Assistance

Five states (Connecticut, Michigan, New Hampshire, New Jersey, and Ohio) have parochial-aid laws that would not fit neatly into any of the preceding categories.

Connecticut has a law exclusively oriented toward aiding educationally deprived children in private schools. The act provides for a range of services, including: pre-kindergarten programs, remedial programs, drop-out programs, special library collections, funds for reducing class sizes, and various experimental programs.

Michigan has an auxiliary services act which, in effect, requires local school districts to provide the same services to private schools as it does for public schools. Specifically mentioned in the bill are such services as: street crossing guards, school diagnostician services for mentally handicapped children, teacher counsellor services for physically handicapped children, and remedial reading programs.

New Hampshire has a permissive act enabling school districts to provide private schools, at state expense, such child-benefits as educational testing, and school guidance and psychologist services.

In New Jersey a law provides for special classes and other facilities for all, including parochial, handicapped students.

Finally, Ohio law allows public boards of education to purchase from private agencies or from any private individual, services designed to promote vocational education or vocational rehabilitation.

Table XI presents all the states' respective parochial-aid laws as of December 1, 1970. Undoubtedly, other state laws which advance tax funds to parochial schools have and will be enacted pursuant to this

TABLE XI

ALL STATES WITH RESPECTIVE TYPES  
OF ASSISTANCE TO ELEMENTARY AND  
SECONDARY PAROCHIAL SCHOOLS

States	Types of Assistance	Transportation	Textbooks	Lunches	Health Services	Shared-time	Driver Education	Teachers' Salaries	Other Direct Aid	Miscellaneous
California	x	x	x				x			
Colorado	x					x				
Connecticut	x	x			x		x	x		x
Delaware	x						x			
Hawaii									x	
Illinois	x			x		x	x			
Indiana	x	x								
Iowa					x	x	x			
Kansas	x				x					
Kentucky	x					x				
Louisiana	x	x	x					x		
Maine	x									
Maryland	x									
Massachusetts	x									
Michigan	x				x	x	x	x		x
Minnesota	x					x	x			
Mississippi			x		x		x		x	
Missouri				x						
Montana	x									
New Hampshire	x				x	x	x			x
New Jersey	x									x
New York	x	x			x					
North Dakota	x									
Ohio	x						x	x		x
Oregon	x			x			x			
Pennsylvania	x	x	x			x	x	x		
Rhode Island	x	x	x			x		x		
South Dakota							x			
Utah							x			
Vermont							x		x	
Washington						x				
West Virginia	x	x								
Wisconsin	x						x			

treatment. For example, the New Jersey Legislature recently passed into law a secular educational services bill which will provide \$9.5 million a year for parochial schools. That law is already under court challenge.

CHAPTER V

AN ANALYSIS OF FEDERAL COURT DECISIONS RELATIVE TO  
THE LEGALITY OF USING PUBLIC FUNDS  
FOR RELIGIOUS SCHOOLS

CHAPTER V

AN ANALYSIS OF FEDERAL COURT DECISIONS RELATIVE TO  
THE LEGALITY OF USING PUBLIC FUNDS  
FOR RELIGIOUS SCHOOLS

Decisions rendered in the cases involving public aid to religion within the matrix of America's schools consist of the very thoughts and actions of our country's forefathers. The words of James Madison encapsulated in his "Memorial and Remonstrance Against Religious Assessments,"\* and of Thomas Jefferson in his "Bill for Establishing Religious Freedom,"\* are repeatedly adduced and perpetuated by our federal courts. Because of those men the substance of the cases reported here in many ways surpasses the bounds of time.

I. A PREFACE TO THE CASES

The cases selected for intensive study and presentation were required to satisfy one or more of four criteria common to all cases on the subject of aid to religious schools. The criteria were: (1) the case may be one most frequently cited by the courts when rendering a decision, (2) the case may be one that offers new direction and fresh thought with respect to future court decisions, (3) the case may involve the question of public financial aid to religious schools, or to students, (4) the case may question the use of tax-supported schools for various religious activities.

---

\*See Appendix D for the complete text of both documents.

Following this brief presentation, the cases are given in chronological order. An attempt was made to maintain the full-flavor of each case but to reduce it to a point where the reader, after having read all of the cases, could see the trend established over the years. The cases of Bradfield v. Roberts, 175 U. S. 291 (1899), and Quick Bear v. Leupp, 210 U. S. 50 (1908) were included because they are frequently cited as legal precedents for the practice of aiding religious schools. This is so regardless of the fact that in Bradfield the case concerned a hospital, not a school; and the hospital was not officially under the authority of any religious sect. Similarly, in Quick Bear the money used to support a sectarian school was from private and not public funds.

Meyer v. Nebraska, 262 U. S. 390 (1923) is significant for the foundation it laid which gave precedent to the case of Pierce v. Society of Sisters, 268 U. S. 510 (1925). In Pierce the Court made clear that a parent has the right to direct the education of his children; he may send them to a private school of either a secular or sectarian character.

Cochran v. Louisiana State Board of Education, 281 U. S. 370 (1930) is considered a landmark case. In it the child-benefit theory was established. Under this logic, books and transportation designated pro bono publico have been allowed, despite simultaneous benefit to sectarian schools. The Cochran doctrine was present when the reimbursement to parents for funds used to transport children to religious schools was allowed in Everson v. Board of Education, 330 U. S. 1 (1947). Also the influence of Cochran was felt when in Board of Education v. Allen, 392 U. S. 236 (1968) the Court upheld the lending of textbooks to all (including parochial) children of the state.

In Illinois ex rel. McCollum v. Board of Education, 333 U. S. 203 (1948) the Court held it unconstitutional to use tax-supported school facilities for the purpose of teaching religion on a released-time basis. In Zorach et al. v. Clausen, 343 U. S. 306 (1952) released-time was held to be a constitutional practice where no tax-supported school facilities were used.

Engel et al. v. Vitale, 370 U. S. 421 (1962) established that the "financial support" of the state through its public school system cannot be used to perpetuate a religious belief. Thus, the Court held that the school could not be a forum for the purpose of reciting a state adopted prayer. And in the case of Abington School District v. Schempp, 374 U. S. 203 (1963) the Court again prohibited the use of a tax-supported school for the purpose of prayer or Bible reading. Equally significant here was the Court's issuance of a constitutional standard for any law which might aid religions or religious schools.

The recounting of Cantwell v. Connecticut, 310 U. S. 296 (1940) was justified on the grounds that it opened the way for a citizen to sue a state for violation of the Religious Clause of the First Amendment.

Another case which opened new territory was that of Flast et al. v. Cohen, 392 U. S. 83 (1968). In Flast the Court held that a federal taxpayer has legal standing to sue where federal programs abridge the religious rights guaranteed by the First Amendment. Prior to Flast the road to suit had been blocked by a decision rendered in Frothingham v. Mellon, 262 U. S. 447 (1923). There the Court had held a federal taxpayer's interest to be "minute and indeterminable."

DiCenso v. Robinson, Jr., case number 4239 (June 15, 1970) and

Johnson v. Sanders, case number 13432 (October 20, 1970) were included because the logic used in both of these cases suggested that the "test" should be whether the government is excessively entangled with the affairs of religion. The cases of DiCenso, Johnson, and Lemon v. Kurtzman, 310 F. Supp. 35 (1969) involve secular educational service laws, and all three are on appeal to the United States Supreme Court.

## II. THE CASES

Bradfield v. Roberts, 175 U. S. 291 (1899).

Bradfield v. Roberts does not deal directly with the question of using public funds for religious schools. A hospital rather than a school was the object of complaint. Nevertheless, the decision rendered in this early case is often pointed to as a precedent for the lawful use of public monies for any religious purpose, and the inclusion of the case is justified on this ground.

In 1897 the Commissioners of the District of Columbia entered into an agreement with the Directors of Providence Hospital, also of Washington. Articles of the agreement provided that the hospital would erect ". . .on the grounds of said hospital an isolating building or ward for the treatment of minor contagious diseases. . .without expense to said hospital . . .but paid out of an appropriation for that purpose contained in the District appropriation bill. . . ." <sup>1</sup> The Treasurer of the United States was named defendant when suit was brought, as he was to make payment to the hospital.

Mr. Joseph Bradfield, a Washington District citizen, complained that

---

<sup>1</sup>Bradfield v. Roberts, 175 U. S. 291 at 293 (1899).



Providence Hospital was dominated by members of the Roman Catholic Church, and as such it amounted to a religious society. Furthermore, Bradfield contended that if the agreement were carried out it would result in an appropriation by Congress of money to a religious society. Initially, an injunction was granted to Bradfield, but the defendant appealed, and the Court of Appeals reversed; whereupon, Bradfield appealed to the United States Supreme Court.

In presenting his own case, Mr. Bradfield advanced the argument that the contract, once consummated would be ". . .contrary to the article of the Constitution which declares that Congress shall make no law respecting a religious establishment. . . ."2

Mr. Justice Peckham delivered the opinion of the Court and took note of Mr. Bradfield's argument, saying that the Constitution ". . .prohibits the passage of a law 'respecting an establishment of religion.'"3 That is, the Constitution is silent on the subject of a religious establishment and that Mr. Bradfield had used ". . .a phrase which is not synonymous with that used in the Constitution. . . ."4 Moreover, Justice Peckham found that the articles which incorporated the hospital made no mention of the religious affiliation of the officers. The fact that all the individuals who composed the corporation happened to be of the same faith could have no bearing. The charter, having been granted by Congress, was subject to the law of its being. Congress had, in the third section of the charter, reserved the right to amend, alter or repeal it, ". . .to remedy any abuse of the charter privileges."5

---

<sup>2</sup>Ibid.    <sup>3</sup>Ibid., p. 297.    <sup>4</sup>Ibid.

<sup>5</sup>Ibid., p. 300.

The Court found that the hospital managed its business ". . .in its own way, subject to no visitation, supervision, or control by any ecclesiastical authority whatever. . . ."6 The judgment of the Court of Appeals was affirmed.

Quick Bear v. Leupp, 210 U. S. 50 (1908).

On February 26 and 27, 1908, the United States Supreme Court heard its first case over the legality of the federal government's use of money for the support of sectarian schools. As it turned out, the money used was part of a private fund, held in trust by the United States Treasury. The significance of the case, despite the facts, lies in the use to which it is put: it is pointed to as a precedent for the legal use of public funds for religious purposes.

Prior to 1900 there was established by the United States Government this policy: contracts were made with numerous sectarian schools for the education of Indians on the various reservations. "But in 1894 opposition developed against appropriating public moneys for sectarian education."7 Accordingly, Congress established the policy of phasing out over the years that type of appropriation, and decreed that the year of 1899 marked the ". . .final appropriation for sectarian schools."8 With this act the Commissioner of Indian Affairs, Francis E. Leupp, was effectively barred from using further public funds for the support of sectarian schools. But in 1906 Commissioner Leupp was petitioned by 212 Sioux Indians of the Rosebud Agency, South Dakota, to use a pro rata proportion

---

<sup>6</sup>Ibid., p. 291.

<sup>7</sup>Quick Bear v. Leupp, 210 U. S. 50 at 78 (1908). <sup>8</sup>Ibid.

of an Indian trust fund for the education of their children in the St. Francis Mission, a Roman Catholic School. The trust fund mentioned was an amount of money set aside for the ". . .support and maintenance of day and industrial schools, including erection and repairs of school buildings. . . ." for the Sioux Indians.<sup>9</sup> The fund was established in 1868 when the United States ". . .made a treaty with the Sioux Indians, under which the Indians made large cessions of land and other rights."<sup>10</sup>

Reuben Quick Bear, Ralph Eagle Feathers, and Charles Tackett sought an injunction against such use of the funds on the grounds that ". . .the spirit of the Constitution requires that the government 'shall make no appropriation whatever for education in any sectarian schools.'<sup>11</sup> An injunction was granted in the supreme court of the District of Columbia, but the defendant, Francis Leupp, appealed. The Court of Appeals reversed, and the plaintiffs appealed to the United States Supreme Court.

In his deliverance of the Court's opinion, Mr. Chief Justice Fuller first noted that the money in question was private, not public; then, that a pro rata proportion of the money for the support of a sectarian school was requested by the Indians; and finally, that the Constitution precluded any law which would prohibit the free exercise of religion. In conclusion the Chief Justice said:

. . .it seems inconceivable that Congress shall have intended to prohibit them from receiving religious education at their own cost if they desire it; such an intent would be one to prohibit the free exercise of religion amongst the Indians, and such would be the effect of the construction for which the complainants contend.<sup>12</sup>

---

<sup>9</sup>15 Stat. 635 (1868).

<sup>10</sup>Quick Bear v. Leupp, 210 U. S. 50 at 80 (1908).

<sup>11</sup>Ibid., p. 81. <sup>12</sup>Ibid., p. 82.

Meyer v. Nebraska, 262 U. S. 390 (1923).

Robert T. Meyer was an instructor in a parochial school maintained by the Zion Evangelical Lutheran Congregation. On May 25, 1920, Meyer was found guilty by the district court for Hamilton County, Nebraska, of the crime of teaching a foreign language to a child not yet educated past the eighth grade. Meyer appealed, and the state supreme court affirmed the judgment of conviction. Again Meyer appealed; this time his appeal was heard by the United States Supreme Court. Meyer's case did not involve the expenditure of public revenues for sectarian schools, but it did establish a principle found in the fabric of other, more relevant cases: the state may not infringe upon the constitutionally-guaranteed liberties by which parents guide the education of their young.

The state law which forbade the teaching of a foreign language read in part:

Section 1. No person, individually or as a teacher, shall, in any private, denominational, parochial or public school, teach any subject to any person in any language other than the English language.

Section 2. Languages, other than the English language, may be taught as languages only after a pupil shall have attained and successfully passed the eighth grade. . . .<sup>13</sup>

The purpose of the statute was to make English the mother tongue of all the children of the state. This was necessary, the state contended, because the ". . . legislature had seen the baneful effects of permitting foreigners who had taken residence in this country, to rear and educate their children in the language of their native land."<sup>14</sup>

---

<sup>13</sup>Meyer v. Nebraska, 262 U. S. 390 at 397 (1923).

<sup>14</sup>Ibid., p. 398.

Meyer demurred to the charge on the grounds that the act interfered with the teacher's right to teach, the child's right to acquire knowledge, and the parent's right to control the education of their children--all guaranteed by the Fourteenth Amendment: "No state. . .shall deprive any person of life, liberty, or property without due process of law."<sup>15</sup>

Mr. Justice Reynolds said that the opinion of the Court was that the "mere knowledge of the German language cannot reasonably be regarded as harmful."<sup>16</sup> Furthermore, the Court held that the right of the plaintiff ". . .to teach and the right of parents to engage him so to instruct their children, we think, are within the liberty of the Amendment."<sup>17</sup> The judgment of Nebraska's state supreme court had to be reversed, the Court said, because "the protection of the Constitution extends to all,--to those who speak other languages as well as to those born with English on the tongue."<sup>18</sup>

Frothingham v. Mellon, 262 U. S. 447 (1923).

This case was decided in 1923. Its practical effect was to bar, for the next 45 years, any suit which questioned the legality of federal appropriations. Therefore, during those years one could not challenge federal programs which supported parochial schools.

In 1921 the Maternity Act (42 Statute at Large 224) was passed by Congress. Briefly, the Act sought to establish programs within the states that would ". . .reduce maternal and infant mortality and protect the health

---

<sup>15</sup>U. S. Constitution, Amendment XIV.

<sup>16</sup>Meyer v. Nebraska, 262 U. S. 390 at 400 (1923).

<sup>17</sup>Ibid.    <sup>18</sup>Ibid., p. 401.

of mothers and infants."<sup>19</sup> Funds were to be apportioned among the states that agreed to accept and comply with the provisions of the Act.

Harriet Frothingham alleged that the effect of the statute would be ". . .to take her property, under the guise of taxation, without due process of law."<sup>20</sup> She complained that the act would increase the burden of her future taxes. Beyond that, the Court was not entirely clear as to the exact nature of her complaint, but took it as a challenge to the legal execution of a federal ". . .appropriation act, on the ground that it is invalid and will result in taxation for illegal purposes. . . ."21

Frothingham sought an injunction in the supreme court of the District of Columbia; that court dismissed Frothingham's bill. Next, the plaintiff appealed to the Court of Appeals of the District of Columbia; there the judgment of the lower court was affirmed. Finally, Frothingham appealed to the United States Supreme Court.

Mr. Justice Sutherland gave the Court's opinion:

His (the taxpayer's) interest in the moneys of the treasury--partly realized from taxation and partly from other sources--is shared with millions of others; is comparatively minute and indeterminable; and the effect upon future taxation of any payment out of the funds so remote, fluctuating, and uncertain that no basis is afforded for an appeal to the preventive powers of a court of equity.<sup>22</sup>

The Court saw that if one taxpayer could litigate such a case, then every other taxpayer could do likewise for every appropriations act. Thus, the Court said that not only must a taxpayer be able to show that he would

---

<sup>19</sup>Frothingham v. Mellon, 262 U. S. 447 at 479 (1923).

<sup>20</sup>Ibid., p. 480. <sup>21</sup>Ibid., p. 486.

<sup>22</sup>Ibid., p. 490.

suffer "in common with people generally" but that he would suffer directly if the act were allowed. The decree of the Court of Appeals was affirmed.

Pierce v. Society of Sisters, 268 U. S. 510 (1925).

In this case the decision rendered by the Court applied as well to the case of Pierce v. Hill Military Academy, 268 U. S. 510 (1925). The cases came before the United States Supreme Court by appeal on the part of the defendant when the United States District Court of Oregon enjoined that state from enforcing a statute requiring children to attend public schools. Following the doctrine handed down in Meyer v. Nebraska, the Supreme Court made it clear that parents have the right to direct the education of children under their control.

Oregon law required every person having control of children between the ages of eight and sixteen years,

. . .to send him "to a public school for the period of time a public school shall be held during the current year" in the district where the child resides. . . .<sup>23</sup>

One appellee, the Society of Sisters, was an incorporated orphanage, operated by the Roman Catholic Church. The Society maintained that the Oregon enactment effectively interfered with ". . .the right of parents to choose schools where their children will receive appropriate mental and religious training," and the right of schools and teachers to pursue their profession.<sup>24</sup> Furthermore, unless the injunction was sustained, the corporation's business would be destroyed.

---

<sup>23</sup>Pierce v. Society of Sisters, 268 U. S. 510 at 530 (1925).

<sup>24</sup>Ibid., p. 532.

The other appellee, Hill Military Academy, was an incorporated school for boys; it was secular in character. The Academy alleged that the Oregon law contravened the corporation's rights guaranteed by the Fourteenth Amendment.

The United States Supreme Court affirmed the lower court's decision, saying that,

Under the doctrine of Meyer v. Nebraska. . .we think it entirely plain that the Act of 1922 unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control. . . . The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.<sup>25</sup>

Cochran v. Louisiana State Board of Education, 281 U. S. 370 (1930).

Mr. Chief Justice Hughes delivered the opinion of the Court:

Viewing the statute as having the effect thus attributed to it, we can not doubt that the taxing power of the state is exerted for a public purpose. The legislature does not segregate private schools or their pupils, as its beneficiaries, or attempt to interfere with any matters of exclusively private concern. Its interest is education, broadly; its method, comprehensive. Individual interests are aided only as the common interest is safeguarded.

Judgment affirmed.<sup>26</sup>

With that brief statement, the Court gave birth to the so-called child-benefit theory.

In 1928 Louisiana enacted a law which compelled the State Board of Education to provide ". . .school books for school children free of cost to

---

<sup>25</sup>Ibid., p. 535.

<sup>26</sup>Cochran v. Louisiana State Board of Education, 281 U. S. 370 at 375 (1930).



such children."<sup>27</sup> The books were in fact to be lent to all of the children of the state, including children of private (secular or sectarian) schools. The cost was to be borne out of state tax funds.

Cochran objected and sought an injunction on the grounds that supplying books to private schools amounted to taking his property without due process of law, a violation of the Fourteenth Amendment. No First Amendment issue was raised.

The state maintained that the purpose of the act was to aid children and not schools. "It was for their (the children's) benefit and the resulting benefit to the state that the appropriations were made."<sup>28</sup> The state was persistent in its view that schools did not benefit from the appropriations. "They (the schools) obtain nothing from them, nor are they relieved of a single obligation because of them. The school children and the state alone are the beneficiaries."<sup>29</sup> It was upon this contention that the United States Supreme Court affirmed the lower court's decision to refuse an injunction.

Cantwell v. Connecticut, 310 U. S. 296 (1940).

The decision in this case held for the first time that the Religious Clause of the First Amendment is held binding upon the states via the Fourteenth Amendment. That is, not only Congress, but the states as well, shall not make a law which "establishes or prohibits a religion." Cantwell complained of a violation of Fourteenth Amendment rights; the United States Supreme Court went further, saying that Cantwell's First Amendment rights were also violated.

---

<sup>27</sup>Ibid., p. 374.    <sup>28</sup>Ibid., p. 375.    <sup>29</sup>Ibid.

Connecticut had a law which, in essence, held that no person could solicit for any religious cause unless that person received permission from the Secretary of the Public Welfare Council of the State. The Secretary's purpose was to determine whether the solicitor's religious assignment was a bonafide one, or fraudulent. Cantwell at first received permission, but later when that permission was revoked, he continued to solicit. The trial court and the supreme court of Connecticut held Cantwell in violation of that state's statute. On appeal and writ of certiorari, the case came before the United States Supreme Court.

Cantwell demurred to the charge by contending that the statute under which he was convicted was offensive to the Fourteenth Amendment: it inhibited his liberty to practice his religion and to freely speak, without due process of law.

The Supreme Court not only held Cantwell's contention to be correct, saying, "the fundamental concept of liberty embodied in that (the Fourteenth) Amendment embraces the liberties guaranteed by the First Amendment."<sup>30</sup> But the Court added this significant statement:

The First Amendment declares that Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. The Fourteenth Amendment has rendered the legislatures of the states as incompetent as Congress to enact such laws.<sup>31</sup>

By reversing the lower court's opinions, it is fair to say that the Supreme Court held that citizens could now sue a state for violation of First Amendment rights.

---

<sup>30</sup>Cantwell v. Connecticut, 310 U. S. 296 at 303 (1940).

<sup>31</sup>Ibid.

Everson v. Board of Education, 330 U. S. 1 (1947).

This was the first case to claim that a state's law which reportedly supported parochial schools violated the Religious Clause of the First Amendment. The High Court was divided in a five-to-four decision which upheld the state law, but the arguments of the dissenting justices have since proven to be of equal significance (for example, see the dissent made by Mr. Justice Douglas in Engel v. Vitale, 370 U. S. 421 (1962), *infra*).

New Jersey enacted a law which would reimburse funds used by parents to transport their children to public or parochial schools, as long as the schools were not operated for a profit. Everson objected to the law; first, because it allegedly took his property and bestowed it for private usage, without due process of law--a violation of the Fourteenth Amendment; and second, because the law would use tax money for the support of religious schools, thus establishing certain religions--a violation of the First Amendment. A New Jersey State Court held that the enactment violated the State Constitution; and the New Jersey Court of Appeals reversed; whereupon the case was appealed to the United States Supreme Court.

To Everson's first charge the Court said that it was not the intention of the law to aid private persons, and that the law was passed to satisfy a public need. The Court agreed that the result was the furtherance of both private and public goals, but that this was merely coincidental, and not the intent of the law. Therefore, "due process" was not denied by the New Jersey statute. Relying upon the child-benefit theory established in Cochran v. Louisiana State Board of Education, 281 U. S. 370 (1930), the Court contended that the aid extended was intended as a safety measure for the children of the public.

To Everson's second charge, the Court first reviewed the history surrounding the First Amendment, and then called into view the meaning of that Amendment in this manner:

The "establishment of religion" clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa. In the words of Jefferson, the clause against establishment of religion by law was intended to erect "a wall of separation between Church and State."<sup>32</sup>

Notwithstanding such words, the Court held that the New Jersey statute had not made the slightest breach in the wall between religion and government. Moreover, the Court held that to inhibit New Jersey in its attempt to extend to its citizens the safety provided by the enactment would preclude the neutral stance required by the First Amendment. The First Amendment ". . . requires the state to be a neutral in its relations with groups of religious believers and non-believers; it does not require the state to be their adversary."<sup>33</sup>

Mr. Justice Jackson in dissenting said that the undertones of the Court's logic stood in stark contrast to its conclusion, and offered as a precedent ". . . that of *Julia* who, according to Byron's reports, 'whisper-

---

<sup>32</sup>Everson v. Board of Education, 330 U. S. 1 at 15 (1947).

<sup>33</sup>Ibid., p. 18.

ing 'I will ne'er consent,'--consented.'"<sup>34</sup> Taking sharp issue with the Court's "general welfare," or "child-benefit" theory, Justice Jackson made this observation:

Catholic education is the rock on which the whole structure rests, and to render tax aid to its Church school is indistinguishable to me from rendering the same aid to the Church itself.<sup>35</sup>

In a separate dissent, Mr. Justice Rutledge questioned the Court's logic in that it sustained public payment for small concessions to religious schools while it makes ". . . wholly private in character the larger things without which the smaller could have no meaning or use."<sup>36</sup> Noting that the decision in Cochran v. Louisiana State Board of Education, 281 U. S. 370 (1930) had made room for the decision in this case, Justice Rutledge said that the now two decisions would make further room for a third. "Thus with time the most solid freedom steadily gives way before continuing corrosive decision."<sup>37</sup>

Illinois ex rel. McCollum v. Board of Education, 333 U. S. 203 (1948)

Here the plaintiff, Vashti McCollum, petitioned the court to order the Board of Education of Champaign County, Illinois to:

. . . adopt and enforce rules and regulations prohibiting all instruction in and teaching of religious education in all public schools. . . and in all public school houses and buildings in said district when occupied by public schools.<sup>38</sup>

The Board in Champaign County had an agreement whereby several

---

<sup>34</sup>Ibid., p. 19.

<sup>35</sup>Ibid., p. 24.    <sup>36</sup>Ibid., p. 51.    <sup>37</sup>Ibid., p. 29.

<sup>38</sup>Illinois ex rel. McCollum v. Board of Education, 333 U. S. 203 at 205 (1948).

denominations could use part of a school day (released-time) to instruct students who volunteered for such instruction on matters of their faith. The facilities of the public school were used for the religious instruction. Those students not desiring religious instruction continued to pursue their secular education.

McCollum contended that by allowing religions to use the tax-supported public school system, the board was promoting religion, and violating the First Amendment. In the state courts of Illinois the plaintiff was denied relief, and the case reached the United States Supreme Court on appeal.

Mr. Justice Black gave the Court's decision: "This is beyond all question a utilization of the tax-established and tax-supported public school system to aid religious groups to spread their faith."<sup>39</sup>

The Court relied heavily upon the views expressed by both the majority and minority in the case of Everson v. Board of Education, 330 U. S. 1 (1947). It repeated its definition of the First Amendment, first given in Everson, then the Court said this:

. . .the First Amendment rests upon the premise that both religion and government can best work to achieve their lofty aims if each is left free from the other within its respective sphere. Or, as we said in the Everson Case, the First Amendment has erected a wall between Church and State which must be kept high and impregnable.<sup>40</sup>

The supreme court of Illinois was reversed.

Zorach et al. v. Clausen, 343 U. S. 306 (1952).

In a six-to-three decision the United States Supreme Court here

---

<sup>39</sup>Ibid., p. 210. <sup>40</sup>Ibid., p. 212.

upheld the constitutionality of a New York City program for released time. Upon the written request of the parents, students were released to attend religious courses given outside of the school building. As in Illinois ex rel. McCollum v. Board of Education, 333 U. S. 203 (1948), students not attending religious classes were confined to the school to pursue secular activities. But unlike McCollum, the program here was conducted outside of the school and wholly at the expense of the participating religions.

Nevertheless, the plaintiffs contended that the tax-supported school system manipulated its schedule to accommodate religions, and that this was in violation of the First Amendment. The New York State Court of Appeals sustained the law, and the case reached the United States Supreme Court on appeal. That High Court said this:

Government may not finance religious groups nor undertake religious instruction nor blend secular and sectarian education nor use secular institutions to force one or some religion on any person.<sup>41</sup>

Three justices dissented; each made the point that New York's law did indeed use a "secular institution to force religion" on the students. Thus Mr. Justice Jackson said in one place that the school ". . . serves as a temporary jail for a pupil who will not go to church. It takes more subtlety of mind than I possess to deny that this is governmental constraint in support of religion."<sup>42</sup> And he summed up in this manner:

It is possible to hold a faith with enough confidence to believe that what should be rendered to God does not need to be decided and collected by Caesar.<sup>43</sup>

---

<sup>41</sup>Zorach et al. v. Clausen, 343 U. S. 306 at 314 (1952).

<sup>42</sup>Ibid., p. 324. <sup>43</sup>Ibid., p. 325.

Engel et al. v. Vitale, 370 U. S. 421 (1962).

The event leading to this case was a prayer adopted by New York's Board of Regents, to be repeated in each class at the start of each school day. The prayer was denominationally neutral, and its observance was voluntary. The "Regents' Prayer" read, "Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers and our Country."<sup>44</sup>

The plaintiffs challenged the state law which allowed the public schools to be used for this religious purpose; they also contended that the recitation of the prayer violated the Religious Clause of the First Amendment. No relief was granted to the plaintiffs by the trial court or by New York's Court of Appeals. But on certiorari, the United States Supreme Court reversed, saying:

When the power, prestige and financial support of government is placed behind a particular religious belief, the indirect coercive pressure upon religious minorities to conform to the prevailing officially approved religion is plain.<sup>45</sup>

Mr. Justice Douglas, in a separate concurring opinion wrote,

The point for decision is whether the Government can constitutionally finance a religious exercise. . . I think it is an unconstitutional undertaking whatever form it takes.<sup>46</sup>

Justice Douglas was one of the majority in the five-to-four decision which sustained the constitutionality of reimbursing parents for the cost of transporting their children to parochial schools: see Everson v. Board of Education, 330 U. S. 1 (1947), supra. It is worth noting,

---

<sup>44</sup>Engel et al. v. Vitale, 370 U. S. 421 at 422 (1962).

<sup>45</sup>Ibid., p. 431.    <sup>46</sup>Ibid., p. 437.



therefore, a comment made by Justice Douglas in this concurring opinion.

The Everson Case seems in retrospect to be out of line with the First Amendment. Its result is appealing as it allows aid to be given to needy children. Yet by the same token, public funds could be used to satisfy other needs of children in parochial schools--lunches, books, and tuition being obvious examples.<sup>47</sup>

Abington School District v. Schempp, 374 U. S. 203 (1963).

The decision rendered here applied as well to the twin case, Murray v. Curlett, 374 U. S. 203 (1963). In Schempp the State of Pennsylvania had a statute which required the Bible to be read at the start of each school day; in addition, the statute called for the recitation of the Lord's Prayer. Participation on the part of students and teachers was not mandatory. Suit was brought in the District Court for the Eastern District of Pennsylvania in an effort to enjoin the enforcement of the statute, and relief was granted to the plaintiffs. Upon appeal by the school district, the United States Supreme Court affirmed the decision of the lower court. In Murray the Board of Commissioners of Baltimore City, Maryland had a rule similar to that in Schempp. Suit was brought in a Maryland state court; the rule was sustained. On appeal, the Maryland Court of Appeals upheld the trial court; whereupon certiorari was granted. The United States Supreme Court reversed the decisions of the lower court.

The Court first reviewed the cases in which the Establishment Clause of the First Amendment had been considered, during the preceding twenty years. Then upon finding that the Court had consistently ruled against the violation of that clause, the Court laid down the following rule:

---

<sup>47</sup>Ibid., p. 443.

The test may be stated as follows: what are the purpose and the primary effect of the enactment? If either is the advancement or inhibition of religion then the enactment exceeds the scope of legislative power as circumscribed by the Constitution. That is to say that to withstand the strictures of the Establishment Clause there must be a secular legislative purpose and a primary effect that neither advances nor inhibits religion<sup>48</sup>

Further, the Court made clear that it was not acceptable to argue that the encroachments on the First Amendment made here were small ones. "The breach of neutrality that is today a trickling stream may all too soon become a raging torrent, and in the words of Madison, 'it is proper to take alarm at the first experiment on our liberties.'"<sup>49</sup>

In a separate opinion Mr. Justice Douglas concurred with the Court, saying that, "through the mechanism of the State, all of the people are being required to finance a religious exercise that only some of the people want and that violates the sensibilities of others."<sup>50</sup> Then, in conclusion, Justice Douglas made his oft-quoted remarks concerning the finance of religious schools with public funds.

The most effective way to establish any institution is to finance it; and this truth is reflected in the appeals by church groups for public funds to finance their religious schools. Financing a church either in its strictly religious activities or in its other activities is equally unconstitutional, as I understand the Establishment Clause. Budgets for one activity may be technically separable from budgets for others. But the institution is an inseparable whole, a living organism, which is strengthened in proselytizing when it is strengthened in any department by contributions from other than its own members.

Such contributions may not be made by the State even in a minor degree without violating the Establishment Clause. It is not the amount of public funds expended, as this case illustrates, it is the use to which public funds are put that is controlling. For the First Amendment does not say that some forms of establish-

---

<sup>48</sup>Abington School District v. Schempp, 374 U. S. 203 at 222 (1963).

<sup>49</sup>Ibid., p. 225. <sup>50</sup>Ibid., p. 228.

ment are allowed; it says that "no law respecting an establishment of religion" shall be made. What may not be done directly may not be done indirectly lest the Establishment Clause become a mockery.<sup>51</sup>

Board of Education v. Allen, 392 U. S. 236 (1968).

The cause of this case was a New York law which required local public school authorities to lend textbooks, free of charge, to all (including parochial) students in grades seven through twelve. Plaintiffs sought to enjoin Commissioner of Education, Allen, from ". . .apportioning state funds to school districts for the purchase of textbooks to be lent to parochial students."<sup>52</sup> They felt that this practice was in violation of the First Amendment, and it was found to be so by the trial court. But upon appeal, the New York Court of Appeals reversed. Plaintiffs then appealed to the United States Supreme Court, where the New York Court of Appeals was upheld.

The Supreme Court repeated the test which was handed down in Abington School District v. Schempp, 374 U. S. 203 (1963). Then the Court held that when this test is applied to the case at hand, it is found that the New York law has "'a secular legislative purpose and a primary effect that neither advances nor inhibits religion.'"<sup>53</sup>

Perhaps equally significant is the fact that the Court held that the plaintiffs had not shown that the ". . .processes of secular and religious training (in parochial schools) are so intertwined that secular text-

---

<sup>51</sup>Ibid., pp. 229-230.

<sup>52</sup>Board of Education v. Allen, 392 U. S. 236 at 240 (1968).

<sup>53</sup>Ibid., p. 243.

books furnished to students by the public are in fact instrumental in the teaching of religion."<sup>54</sup>

As one of three dissenting justices, Mr. Justice Black contended that,

It requires no prophet to foresee that on the argument used to support this law others could be upheld providing for state or federal government funds to buy property on which to erect religious school buildings or to erect the buildings themselves, to pay the salaries of the religious school teachers, and finally to have the sectarian religious groups cease to rely on voluntary contributions of members of their sects while waiting for the Government to pick up all the bills for the religious schools.<sup>55</sup>

Justice Black, as with his Brother Justice Douglas, was among the majority in Everson v. Board of Education, 330 U. S. 1 (1947), where a law authorizing reimbursement to parents for the cost of transporting their children to sectarian schools was sustained. Both approached their seemingly disparate positions on the basis that books can advance ideologies, whereas, strictly speaking, transportation cannot. For example, Justice Douglas wrote, "whatever may be said of Everson, there is nothing ideological about a bus."<sup>56</sup> Moving on, Justice Douglas noted that initial selection of books would be performed by the parochial schools, and that even though final approval would come from the local board of education, "powerful religious-political pressures will therefore be on the state agencies to provide the books that are desired."<sup>57</sup> This is so, Justice Douglas contended, because the boards are elected in New York.

Justice Douglas concluded by saying that even if his contentions

---

<sup>54</sup>Ibid., p. 248.    <sup>55</sup>Ibid., p. 253.    <sup>56</sup>Ibid., p. 257.

<sup>57</sup>Ibid., p. 265.

were wrong, the alternative is to introduce secularism into the sectarian schools where the long-range effect would be state domination of the church. Therefore, either way ". . .the principle of separation of church and state, inherent in the Establishment Clause of the First Amendment, is violated by what we today approve."<sup>58</sup>

Flast et al. v. Cohen, 392 U. S. 83 (1968).

The plaintiffs sought an injunction in the District Court for the Southern District of New York against the use of Elementary and Secondary Education Act of 1965 funds to purchase textbooks and other materials for parochial schools. The complainants alleged that such use of federal funds violated their rights under the Religious Clause of the First Amendment. Relying heavily upon the decision rendered in Frothingham v. Mellon, 262 U. S. 447 (1923), supra, the District Court ruled that the plaintiffs lacked proper standing to bring suit. Flast appealed his case to the United States Supreme Court, and that Court reversed the lower court's decision.

In the Frothingham case, the plaintiff argued that the action of Congress injured her because it would result in higher taxes for her to pay. In the case at hand the Court said that there is no statute or constitutional provision which purports to protect citizens against increased taxes; therefore, there could be no nexus between the status of a taxpayer and the infringement alleged in Frothingham. However, that necessary connection was established by Flast. Here the taxpayer showed that the infringement, if allowed, would specifically transgress the limits of a

---

<sup>58</sup>Ibid., p. 266.

constitutional guarantee--religious freedom.

Consequently, we hold that a taxpayer will have standing. . .to invoke federal judicial power when he alleges that congressional action under the taxing and spending clause is in derogation of those constitutional provisions which operate to restrict the exercise of the taxing and spending power.<sup>59</sup>

The constitutional provision which operated to restrict congressional spending power here was the First Amendment. That Amendment has a gloss on it which disallows spending where the Religious Clause would be violated.

The Court declined to express a viewpoint on the merits of the appellant's claim that federal spending for the advantage of parochial schools is unconstitutional; rather it only granted that the plaintiffs had the right to challenge that contention in a federal court.

In a separate concurring opinion, Mr. Justice Douglas contended that there is at work on the federal level an attempt to block from review laws that would aid parochial schools. Therefore, he suggested that the courts should stand in easy availability, for they may well be the citizen's only means for redress. Justice Douglas further stated that "the mounting federal aid to sectarian schools is notorious and the subterfuges numerous."<sup>60</sup> He used the following as examples:

"Tuition grants to parents of students in church schools is considered by the clerics and their helpers to have possibilities. The idea here is that the parent receives the money, carries it down to the school, and gives it to the priest. Since the money pauses a moment with the parent before going to the priest, it is argued that this evades the constitutional prohibition against government money for religion! This is a diaphanous

---

<sup>59</sup>Flast et al. v. Cohen, 392 U. S. 83 (1968).

<sup>60</sup>Ibid., p. 113.

trick which seeks to do indirectly what may not be done directly."

"Another one is the 'authority.' The state may not grant aid directly to church schools. But how about setting up an authority --like the Turnpike Authority? The state could give the money to the authority which, under one pretext or another, could channel it into the church schools."

"Yet another favorite of those who covet sectarian subsidies is 'child benefit.' Government may not aid church schools, but it may aid the children in the schools. The trouble with this argument is that it proves too much. Anything that is done for a school would presumably be of some benefit to the children in it. Government could even build church school classrooms, under this theory, because it would benefit the children to have nice rooms to study in."<sup>61</sup>

Lemon v. Kurtzman, 310 F. Supp. 35 (1969).

This suit was brought before the District Court of Pennsylvania; Chief Circuit Judge Hastie and Judges Luongo and Troutman presided. Under this suit plaintiff Lemon, et al., sought to enjoin the expenditure of State funds under the Pennsylvania Nonpublic Elementary and Secondary Act. The act permits the Superintendent of Public Instruction to enter into contracts with nonpublic (including parochial) schools for the purchase of secular educational services. Purchases are limited to the cost of teachers' salaries, textbooks, and instructional materials for the subjects of mathematics, physical science, modern foreign language, and physical education. Tax funds are taken only from the proceeds of State horse and harness racing.

The plaintiffs alleged that the Pennsylvania Act violated the Establishment Clause of the First Amendment. Specifically, Lemon charged that the Act has as its purpose and primary effect the advancement of

---

<sup>61</sup>Ibid., p. 113.

religion; that the vast majority of recipients of aid under the Act are sectarian schools; and that the true intent of the Pennsylvania Legislature was to aid religious schools.

The majority of the court disagreed with the plaintiffs, saying, "we believe that the purpose of the Education Act can be found clearly on its face."<sup>62</sup> Next the court noted that the Pennsylvania Legislature had recognized the potential financial burden on the public treasury, should the nonpublic schools close. But the court, quoting from Everson v. Board of Education, supra, said this: "The fact that a state law, passed to satisfy a public need, coincides with the personal desires of the individuals most directly affected is certainly an inadequate reason . . .to say a legislature has erroneously appraised the public need."

As to the plaintiffs' charge that the Act's true purpose was to aid religion, and that the Legislature's original intent should be examined, the court quoted from Mr. Justice Frankfurter in McGowan v. Maryland, 366 U. S. at 469. "Inquiry into the hidden motives which may move (a legislature) to exercise a power constitutionally conferred upon it is beyond the competency of the courts."

Finally, relying upon the doctrine of neutrality considered in Board of Education v. Allen, supra, the court admitted that the line is not easy to draw:

However, we believe the Education Act is consistent with neutrality towards religion and comes within the permissible limits and spirit of the nonestablishment principle. Consequently, we will dismiss the plaintiffs' complaint under the establishment clause.<sup>63</sup>

---

<sup>62</sup>Lemon v. Kurtzman, 310 F. Supp. 35 at 45 (1969).

<sup>63</sup>Ibid., p. 48.



Chief Circuit Judge Hastie dissented. "The state buys no services and the school sells none," said Judge Hastie, "the artificial characterization of this procedure as 'contracting for secular educational services' does not help solve our constitutional problem."<sup>64</sup> Seeing the direct financing of a religious enterprise as unconstitutional, the Judge said, "Constitutionally, such subsidizing of a religious enterprise is not essentially different from a payment of public funds into the treasury of a church."<sup>65</sup> Nor could Judge Hastie see the difference between financing other church related activities, like hospitals, charities, and homes for the aged from financing the school activities of a church--all are relieving the state of additional expenditures. In conclusion, the Judge said that the Education Act requires the state to become involved in religious affairs. "I am unable to avoid the conclusion that the state undertaking authority by Act 109 would thus intolerably involve the state in the realm of the sectarian."<sup>66</sup>

DiCenso v. Robinson, Jr., case number 4239 (June 15, 1970).

In 1969, the Rhode Island Legislature enacted Public Law 246, entitled the Salary Supplement Act. The purpose of the Act was, in the language of the statute, "to assist nonpublic schools to provide salary scales which will enable them to retain and obtain teaching personnel who meet recognized standards of quality." Money was appropriated in order to pay up to 15 percent of the salaries of teachers of secular subjects in nonpublic elementary schools.

---

<sup>64</sup>Ibid., p. 50    <sup>65</sup>Ibid., p. 51.

<sup>66</sup>Ibid., p. 53.

The plaintiffs brought suit, alleging that the primary beneficiaries of the Act, the Catholic schools, have as a goal, the propagation of the Catholic faith; therefore, the Act establishes a religion. In addition, the plaintiffs claimed that compulsory taxation in aid of a religion violated the Free Exercise Clause. A declaration that the Act violated the Establishment and Free Exercise Clauses of the First Amendment was sought in a three-judge district court in Rhode Island.

The defendants stressed that the Act aided teachers, not schools, and urged the court to focus solely on the fact that the Act gave aid only to teachers of secular subjects. But the court labeled such a narrow perspective as "unrealistic," and averred that under this test ". . . sophisticated bookkeeping could pave the way for almost total subsidy of a religious institution by assigning the bulk of the institution's expenses to 'secular' activities."<sup>67</sup>

Prior to a consideration of the plaintiffs' charges, the court: (1) examined the Act and focused on the governmental regulations designed to implement the Act; (2) reviewed the nature of the crisis leading to the Act, and found--(a) that only the Catholic schools faced a financial crisis, (b) that the crisis stemmed from the conversion in Catholic schools of religious to lay teachers, (c) that the present ratio of 2 religious for 1 lay teacher was expected to soon be a 1 to 1 ratio, and within five years, an all lay staff, (d) that, in view of those facts, only ". . . substantially greater appropriations subsidizing substantially greater percentages of the salaries of lay teachers. . ." would permit the Act to

---

<sup>67</sup>DiCenso v. Robinson, Jr., case number 4239 (June 15, 1970).

achieve its objective--to enable nonpublic schools to compete effectively for qualified teachers;<sup>68</sup> (3) finally the court admitted evidence showing the interweaving financial relationship between the Catholic schools' religious and pedagogical missions. Citing from the Catholic Handbook of School Regulations that "Religious formation is not confined to formal courses; nor is it restricted to a single subject area. . ." the court found the diocesan school system to be an intergral part of the religious mission of the Catholic Church, and termed the school an "essentially religious enterprise."<sup>69</sup> In concluding this portion of the examination, the court said:

. . .we find that the statute will have the significant if temporary secular effect of aiding the quality of secular education in Rhode Island's Roman Catholic elementary schools. On the other hand, we think it equally clear that the Act gives significant aid to a religious enterprise.<sup>70</sup>

Turning now to the plaintiffs' charges, the court quickly dismissed the free exercise claim since no evidence had been introduced ". . .to show the coercive effect of the enactment as it operates against (them) in the practice of (their) religion."<sup>71</sup> Only the charge of violation of the Establishment Clause remained to be examined.

The plaintiffs quoted from the test laid down in Everson v. Board of Education, 330 U. S. 1 at 16 that "No tax in any amount, large or small, can be levied to support any religious activities or institutions. . ." and averred that the Rhode Island Act ran wide of this stricture. The court responded by saying that the test could not be used since it did not even prohibit aid to religious institutions in the Everson case.

---

<sup>68</sup>Ibid.    <sup>69</sup>Ibid.    <sup>70</sup>Ibid.    <sup>71</sup>Ibid.

With the Everson test dismissed, the plaintiffs built their argument around the test relied upon in Board of Education v. Allen, 392 U. S. 236 at 243.

The test may be stated as follows: what are the purpose and primary effect of the enactment? If either is the advancement or inhibition of religion then the enactment exceeds the scope of the legislative power as circumscribed by the Constitution.

As to the first part of this test, the court held that the purpose of the Act was clearly stated in the statute--"to provide a quality education for all Rhode Island youth, those in public and non-public schools alike," and that certainly this was a legitimate legislative concern. Attention now turned to the "primary effect" part of the test. The contestants argued over whether the effect of the Act primarily aided the religious or secular mission of the Catholic schools. But the court cut through this, saying,

. . .as we have already noted in our findings, the Act has two significant effects: on the one hand, it aids the quality of secular education; on the other, it provides support to a religious enterprise. Judicial efforts to decide which of these effects is "the primary effect". . .are likely to be no more satisfactory than efforts to rank the legs of a table in order of importance.<sup>72</sup>

Not satisfied with either the test used in Everson or Allen, the court turned to the logic enunciated by Chief Justice Warren Burger in Walz v. Tax Commissioner of New York City, 38 U. S. L. W. 4347 (May 4, 1970), a case which upheld New York's religious property tax exemption law. There Justice Burger observed that the test was whether the statute fosters "excessive entanglement" between government and religious institutions.

---

<sup>72</sup>Ibid.

In the words of the Chief Justice:

The questions are whether the involvement is excessive, and whether it is a continuing one calling for official and continuing surveillance leading to an impermissible degree of entanglement. Obviously a direct money subsidy would be a relationship pregnant with involvement and, as with most governmental grant programs, could encompass sustained and detailed administrative relationships for enforcement of statutory or administrative standards. . . (Walz v. Tax Commissioner of New York City, 38 U. S. L. W. 4347 at 4350 (May 4, 1970)).

At this point the court referred to its earlier examination of the regulations designed to implement the Rhode Island Act, and found the statute to be a significant limit on the internal freedom of parochial schools. Commenting upon the necessary restrictions attached to direct aid, the court noted that should such aid be allowed, the Church's victory over the Establishment Clause would mean the abandonment of its rights under the Free Exercise Clause. In conclusion the court said:

In short, we see as the necessary effects of the kind of legislation involved here not only substantial support for a religious enterprise, but also the kind of reciprocal embroilments of government and religion which the First Amendment was meant to avoid. We therefore hold that the Salary Supplement Act results in excessive government entanglement with religion and thus violates the Establishment Clause of the First Amendment.<sup>73</sup>

Johnson v. Sanders, case number 13432 (October 20, 1970).

The three-judge district court in this case unanimously held Connecticut's Nonpublic School Secular Education Act to be in violation of the Establishment Clause of the First Amendment of the United States' Constitution. Connecticut's Act would have paid twenty percent of the salaries of teachers of secular subjects in nonpublic schools.

---

<sup>73</sup>Ibid.

The plaintiffs alleged that the law established a religion, and that the religious enrollment discrimination policy, tolerated by the Act, violated their equal protection rights. The defendants contended that funds intended for purely secular activities could not be assumed to sustain the institution built around them. Another claim made by the defendants was that a failure by Connecticut to purchase secular activities from parochial schools constituted a violation of their free exercise rights. Their logic was also used by the defendants of the DiCenso v. Robinson, (case number 4239, June 15, 1970) case: "if the State allows the quality of parochial schools to drop, Catholics will have to place their children in a public school--even though it would violate their consciences to do so; therefore, their constitutional right to send their children to the school of their choice hinges upon whether or not the State financially sponsors their schools."

To the defendants' first claim, the court said that no purpose was served by abstract discussion of the Catholic schools' secular versus its religious function, that the realities of school operation must be observed, and that,

. . .a law which converts a school's entire task of providing secular instruction from a purely private to a predominately state responsibility, while permitting religious instruction to continue unaltered, would constitute sponsorship of the school--the physical and administrative facility through which religion is taught--even if all public funds were formerly designated to be spent for functions other than teaching religion.<sup>74</sup>

Responding to the second charge, the court reminded the defendants that the Constitution dictates no financial measures designed to sponsor

---

<sup>74</sup>Johnson v. Sanders, 13432 (October 20, 1970).

parochial schools. Then the court quoted from DiCenso, saying, "Certainly it would be anomalous if the First Amendment required the State to exclude religion from the public schools but at the same time to support an entire separate school system in order to facilitate the teaching of religion."<sup>75</sup>

The equal protection argument advanced by the plaintiffs did not long detain the court. Since neither of the plaintiffs could establish a nexus between their allegation and personal injury, the court ruled that the plaintiffs had no legal standing to challenge the act on equal protection grounds.

As to First Amendment grounds, the court said the question to be settled was whether Connecticut's efforts to separate the secular from religious in parochial schools, as required by the Act, either advanced or inhibited religion. Then, after reviewing the administrative requirements of the Act, the court decided that the statute would either advance or inhibit religion, depending on how effectively the Act's regulations were enforced.

If the State purchases instruction but engages in only cursory investigation and policing of its nature, then its secularity cannot be assured and it is likely that religion also will be advanced by a transfer of a part of the State's revenue to support it. If officials do their jobs under the Act zealously, on the other hand, their broad intrusion into the administration of parochial schools will be certain to work changes restricting religion substantially. . . . In either case, a law which sets up this inevitable, institutionalized conflict promotes the very evils which the First Amendment bars and cannot be termed primarily secular in effect.<sup>76</sup>

In summary, the court unanimously declared that the Connecticut Act ". . . violates the Establishment Clause of the First Amendment to the Constitution of the United States."<sup>77</sup>

---

<sup>75</sup>Ibid.    <sup>76</sup>Ibid.    <sup>77</sup>Ibid.

## CHAPTER VI

### SUMMARY AND CONCLUSIONS



## CHAPTER VI

## SUMMARY AND CONCLUSIONS

## I. SUMMARY

The Relationship Between Certain Religions and Governments Prior to America

The annals of mankind are so congested with accounts of strife between governments and religions that almost all of history may accurately be looked upon as a continuous church and state battle. So much blood has been shed, so many have been persecuted, prosecuted, and executed--all in the name of one religion or another--that the story must be told in brief lest it overwhelm the imagination and make no impression at all.

By 2494 B. C. the Egyptian kings had somehow linked their ancestry to the gods, making religion and government one and the same. Even then, at that early date, no man dared to follow his conscience, for the established religion had behind it all of the awesome power of the state.

Time passed and governments changed hands, but the principle of establishmentarianism remained constant. Egypt was conquered by Persia in 525 B. C., and within less than a century the people, under the threat of the sword, bowed to a new state-religion. But time did not permit the Egyptians to become accustomed to their new gods for hardly a lifetime passed before the Macedonians, in firm control, required the Egyptians as well as the Persians to venerate the image of the Great Alexander. Three-hundred years later Cleopatra fell at the hand of Caesar of Rome, marking the end of the Macedonian rule. Established religions had changed so

frequently over the years that the disintegrated state of religious life in Egypt was, by the time of Christ, only equaled by that country's disorganized governmental structure.

While Egypt had been deteriorating, Rome had grown in power. Early in the history of Rome, religion was represented by a plethora of Romanized-Greek Gods, but as the geographical boundaries widened, a form of Emperor-worship was borrowed from Syria, and the church and state in Rome fused. It was under this system of Emperor-worship that Christianity, largely as a protest movement, came into being.

Not even the most innocent need to be reminded of the policy of horror perpetrated by the Romans. So many Christians entered martyrdom under Roman persecutions that all significance is lost if the terror of that era is collectively contemplated.

But Roman intolerance of heretical religious ideas turns pale and stands shriveled in the shadow of the monstrous effusion of hatred unleashed by Theodosius the Great when, in 380 A. D., he proclaimed Catholicism the official state religion. The blood-spilling policy directed toward all who resisted the proselytizing efforts of the Catholic Church infected all of Europe, and eventually, through colonization, almost every part of the world suffered. The agony caused by the unity of church and state under Christianity knows no comparison!

As the church grew in power, the influence of the Pope became so great that the very authority of the crown heads of Europe was threatened. Mere men stood as helpless pawns, trapped between the might of the state in this world, and the threatening incorporeal influence of the Church. In fact, the first great struggle between church and state was waged over

the right to control the appointment of religious officers, who controlled the government, which controlled the people. Neither Pope Gregory VII nor King Henry IV had any illusions about the outcome--to the winner went the people.

Establishmentarianism was directly responsible for over two-hundred years of Holy Crusades. Ostensibly waged against the Turks, it became apparent before the last man died that the Popes' true purpose was to proselytize and Catholicize the world. That same concept requiring the government to support religion was also responsible for the longest witch-hunt in the history of man--the iniquitous Catholic Inquisition. This systematic policy of pursuing and persecuting heretics was begun in 1200, and directed by the Holy Office of the Catholic Church until 1834, when the Inquisition was officially ended. In actuality though a facet of the work of the Inquisition still exists. In 1965 the Holy Office was abolished by Pope Paul VI, but the Sacred Congregation for the Doctrine of the Faith is charged yet with the responsibility of condemning the authors of heretical books.

Everyone knows of the first official and national breach with Rome under King Henry VIII of England, but few remember the cost in terms of human suffering. King Henry established the Church of England, whereupon he died, and his daughter Mary I re-established the Roman Catholic Church. Then five years later Mary died, and Elizabeth I reinstated the Church of England. This story is easily told, but there simply is no way to recount the pathetic stories of the countless victims who suffered at the hands of whichever religion happened to be in power. It was upon this bloody background of religious establishment that spiritual asylum was sought in America.

Relations Between Religion and Government in Early America.

One of the first official acts of early American settlers was to sanctify certain religions. That was natural. Their accustomed religion lent stability to an otherwise insecure existence. In addition, thousands of years of following the prescribed religion was a practice not easily abandoned. Furthermore, the hierarchy of European religions worked through the official power of American leaders to maintain their hold on their former flock. Yet the principle of religious establishment could not last in America. Separation of church and state was inevitable if for no other reason than the diversity found among the religious ideas of immigrants drawn from the different quarters of Europe. But more important was the growing awareness that they were now free! For the first time in history men had a choice; they could follow their consciences. The old authorities were simply too far away to maintain control, and the authorities in America were not yet well enough entrenched to effect control.

Yet the concept of separation of church and state could never have materialized without a government elected by the people. America's independence in religious terms meant that common men could elect representatives through which their consciences on church and state matters could be voiced. Thus it was natural for Virginia (in 1776) to elect Patrick Henry as the first state governor. In a famous court battle (in 1758) in which ministers of the Church of England sought tax support, Henry forever signalized himself as a champion of religious freedom. Later Henry wrote the Sixteenth Article of the Virginia Bill of Rights. That Article marked the first official intention of government to stand behind the separation of church and state.

Other outstanding proponents of religious liberty include both James Madison and Thomas Jefferson. The works of Henry, Madison, and Jefferson led directly to the religious clause of the First Amendment to America's Constitution. The strictures placed upon Congress by that Amendment were later extended to the state legislators by the Fourteenth Amendment, and as a result, no law may be enacted "respecting an establishment of religion or prohibiting the free exercise thereof." That simple expression was the belated climax to four-thousand years of religious persecution.

#### Religious Schools In America.

In 1784 a dramatic state legislative battle took place in Virginia; the issue at stake was a bill designed to provide public support for teachers of sectarian schools. Oddly, Patrick Henry supported the bill, but both Madison and Jefferson opposed it. Describing the legislation as "an experiment on our liberties," Madison wrote a treatise on religious assessments that even today is repeatedly quoted by all levels of the federal courts. A second consequence of that early battle was also inauspicious to the religious struggle for public funds: Jefferson emphatically charged that it was "sinful and tyrannical" to force citizens to support opinions which they disbelieve. The bill before the Virginia Legislature was overwhelmingly defeated, but the denouement itself was hardly significant--the perennial quest for public support for religious schools had only begun. However, as if to insure the permanency of the parochial-aid struggle, exactly one hundred years later--in 1884--Catholic bishops made it morally binding upon Catholic parents to send their children to parochial schools. That single act did more than anything else to

perpetuate the war for public support of parochial schools.

Five arguments have been used in the name of parochial-aid. Two of those arguments were advanced in the first significant attempt to secure parochial-aid, in New York City in 1840. There Catholic leaders emphasized that existing Catholic schools would collapse unless they received financial relief, and that all of the Catholic students would be thrown into the public schools, straining the public educative facilities. In addition they argued that since Catholics also paid taxes, they were therefore entitled to a pro rata share with which to aid Catholic schools.

The three other arguments in the order of their ascendancy and use are: (1) the child-benefit theory--that public aid primarily assists the children of the state rather than the religious institution proper; (2) the contract theory--that the parochial school is only helping the state provide its citizens with secular education, and therefore may be recompensed under a state contract; (3) the free exercise theory--that unless the state finances parochial schools, Catholic parents will be prevented from following their consciences and sending their children to Catholic schools.

#### Federal and State Provisions for the Separation of Church and State

In various ways the federal government and all states have provided for freedom of religion, and against the establishment of religion.

The First Amendment to the United States Constitution prohibits Congress from making laws which respect "an establishment of religion," or prohibit the "free exercise thereof." The Fourteenth Amendment extends this protection to the citizens of the different states.

Though state constitutions grace the concept of separation of church and state, they do so out of concern for religious freedom. Thus 45 of the state constitutions have preambles reflecting a reliance upon God. Twenty-five of the preambles specifically invoke God's favor upon the state, while 40 preambles, in one way or another, express gratitude to God.

All state constitutions provide, to some degree of specificity, for the separation of church and state. Thirty-two states have constitutional prohibitions against religious tests as qualifications for holding a public office. Eighteen bar religious tests designed to qualify witnesses. And six states will not allow any type of religious test as a qualification for entering public schools. Other states may or may not proscribe such tests in actuality, but the facts given here concern only specifically mentioned proscriptions in state constitutions.

Forty-four states prohibit any interference with the freedom of an individual to worship, and 15 states guarantee the free exercise of conscience. Some states equate those two guarantees, while others differentiate by saying that freedom of worship means the freedom to worship God in any mode; whereas, liberty of conscience may lead one to worship or not to worship God.

Twenty-nine states have provisions which preclude the enforcement of church attendance, and 34 states have constitutional bars against the establishment of any religion, denomination, or mode of worship.

Arizona, California, Colorado, Idaho, Montana, Nebraska, Nevada, South Dakota, Wisconsin, and Wyoming are states which outlaw the dispensation of sectarian instruction in the public schools. However, such

indoctrination has now been ruled against by the United States Supreme Court and would be considered binding upon all states.

Forty-two states will not allow laws requiring support for religious institutions. Depending upon the state, various provisions describe "institutions" as ministers, ministrys, places of worship, religious creeds, universities, hospitals of particular sects, religious exercises-- or any combination thereof. In addition, 23 states specifically prohibit the use of public support in any fashion for religious or sectarian schools. Sixteen of the remaining 27 states have established school funds and their constitutional provisions restrict those particular funds to the operation of the public schools. That is, presumably, unrestricted tax funds could be used for nonpublic schools unless proscribed elsewhere.

Federal and State Provisions Permitting the Use of Public Funds for Religious Schools.

The federal acts which permit public funds to be used for the support of parochial schools, together with their main provisions are:

1. National School Lunch Act of 1946--this act provides needy children with either free or low cost lunches;
2. Federal Property and Administration Services Act of 1949--through this legislation surplus government property may be donated to public or non-public, including parochial schools;
3. Agriculture Act of 1954--here the law provides for the distribution of milk to any schools of high school level and under;
4. National Defense Education Act of 1958--loans, and guidance and counseling services are made available to any nonprofit school through this bill;
5. Economic Opportunity Act of 1964--this act allows for grants for specific



purposes, and for VISTA volunteers--any nonprofit school is eligible to apply;

6. Elementary and Secondary Education Act of 1965--there are many provisions to this act, but the ones most important to nonpublic, including religious schools, are Titles I and II through which special educative equipment and various library resources are available;

7. Higher Education Act of 1965--specific programs designed, for example, to establish remedial aid for dropouts are possible through this legislation;

8. Child Nutrition Act of 1966--here any school may be reimbursed for the cost of providing needy children with breakfasts;

9. Veteran's Readjustment Benefits Act of 1966--according to this bill any veteran, having served in the armed forces for a certain period of time, may receive funds for education received at any school at the secondary level or above.

Thirty-three states with 83 laws make public assistance available to elementary and/or secondary parochial schools or parochial school students. Most of those laws offer only fringe-type concessions such as transportation or books; such benefits are justified under the child-benefit theory. Some states, however, offer direct aid, mostly under the contract theory.

Six states (Connecticut, Louisiana, Michigan, Ohio, Pennsylvania, and Rhode Island) have "purchase of secular educational services laws." Pennsylvania's law has been upheld by a federal district court, while Connecticut's and Rhode Island's laws have been held unconstitutional by a federal district court. In addition, Louisiana's law has been held unconstitutional by that state's supreme court. The decisions rendered

in the Pennsylvania and Rhode Island cases have been accepted by the United States Supreme Court for adjudication.

Three other states offer different forms of direct aid to parochial schools: Hawaii offers parents of all students tax credits; Mississippi offers loans, which may be partially or totally forgiven, to nonpublic students; and Vermont pays for the tuition of private school pupils.

Ten states have laws authorizing public schools to engage in shared-time programs. Sixteen states offer parochial school students driver education courses which are partially or totally at state expense.

In nine states textbooks are loaned to nonpublic, including parochial school students, and 25 states have laws which make transportation available to parochial school students. The practice of loaning textbooks to parochial schools has been upheld twice by the United States Supreme Court, and transportation has been approved by that Court once, in the Everson case. The Everson decision was split five-to-four, and Mr. Justice Douglas was among the majority. Justice Douglas is one of the two justices remaining on the Court since Everson, and he has said that, in retrospect, that decision appears to be out of line with the Constitution.

Though other states may in practice provide lunches and health services to parochial school students, only seven have designed legislation with that specific intent.

Five states have passed laws which generally make available to parochial schools the same supplementary educational services as are available to public schools.

Finally, since the state statutes were researched for this report, New Jersey has passed into law a bill which will provide \$9.5 million a year to parochial schools. That law is now under court challenge.

## II. CONCLUSIONS

Based on the foregoing analysis it may be concluded that:

1. books may be loaned to all children of the state where the law is religiously neutral, and where the child and subsequently the state are the primary beneficiaries; likewise, parents may be reimbursed for transporting their children to parochial schools, under a law intended to satisfy a public need;
2. students may not be released into publically supported facilities for religious instruction, but they may be released for such instruction where no tax support is involved;
3. government may not finance religious exercises such as prescribed prayer, and Bible reading, in the public schools;
4. the child is not merely the "creature of the state"--the parent has the right and high duty to determine the educational direction of his child;
5. since Roman Catholic bishops declared under cannon law 1374 that Catholic parents, under penalty of sin, must send their children to Catholic schools, unless excused from this obligation by their bishop, it should not be said that Catholic parents only follow their personal consciences in this matter;
6. it is proper for the court to investigate the character and environment under which education is conducted in a state supported religious school if that same investigation is proper in a public school;

7. under laws which mandate a secular public school system, it would be anomalous for the law to support secular teaching in a parochial school where religious teaching is conducted in that same school;
8. the Court's statement that "no tax in any amount, large or small, can be levied to support any religious activities or institutions," has not effectively precluded such support;
9. in the Court's test which questions the "purpose and primary effect" of laws which might aid religion, the word primary is no longer of significance;
10. the courts will not question the motives of legislators, rather the stated intent of laws is taken as being prima facie evidence of the purpose;
11. the Constitution requires that laws be religiously neutral, that they neither "advance nor inhibit" religion;
12. where a statute fosters "excessive entanglement" between government and religion, the First Amendment is violated;
13. if the law financially supports secular teaching in a parochial school but fails to guarantee the secularity of that teaching, it may establish a religion; if the secularity of that teaching is guaranteed, the law will become "excessively entangled" with religion and violate the free exercise thereof;
14. the direct use of public funds for religious schools is a violation of the Constitution of the United States of America.

## BIBLIOGRAPHY

## BIBLIOGRAPHY

## A. PRIMARY SOURCES

1. State Constitutional and Statutory Laws

Alaska Statutes--1962. Charlottesville, Virginia: The Michie Company.

Acts 1965, Indiana. 94th Session, Chapter 260, Indianapolis, Indiana: Central Publishing Company.

Acts of Iowa. Second Regular Session, Chapter 1110, Des Moines, Iowa: by the State.

Annotated Code of Maryland. IX-A, Charlottesville, Virginia: The Michie Company.

Annotated Laws of Massachusetts. II-B, and X, Charlottesville, Virginia: The Michie Company.

Annotated Missouri Statutes. XI, Kansas City, Missouri: Vernon Law Book Company.

Arizona Revised Statutes Annotated. I, St. Paul, Minnesota: West Publishing Company.

Arkansas Statutes Annotated--1947. I, Indianapolis, Indiana: The Bobbs-Merrill Company, Inc.

Burns Indiana Statutes. I, Indianapolis, Indiana: The Bobbs-Merrill Company, Inc.

Burns Indiana Statutes Annotated. VI, Indianapolis, Indiana: The Bobbs-Merrill Company.

Code of Alabama. I, Charlottesville, Virginia: The Michie Company.

Code of Laws of South Carolina. XVI, Charlottesville, Virginia: The Michie Company.

Code of Georgia Annotated. Book I, Atlanta, Georgia: The Harrison Company.

Code of Virginia--1950. IX, Charlottesville, Virginia: The Michie Company.

Colorado Revised Statutes--1953. I, Chicago, Illinois: Callaghan & Company.

Colorado Revised Statutes--1953. Chapters 106 to 137, Chicago, Illinois: Callaghan & Company.

Colorado Revised Statutes--1963. IX, Denver Colorado: Bradford-Robinson Printing Company.

Constitution of the State of California Annotated--1952. I, II, San Francisco, California: Bancroft-Whitney Company.

Delaware Code Annotated. I, Brooklyn, New York: Edward Thompson Company.

Delaware Code Annotated. Titles 12 to 14, St. Paul, Minnesota: West Publishing Company.

Florida Statutes Annotated Revised--1968. XXV-A, XXVI-A, Atlanta, Georgia: The Harrison Company.

General Laws of Mississippi--1969. Extraordinary Session, Jackson, Mississippi: by the State.

General Laws of Rhode Island--1956. I, III-A, Indianapolis, Indiana: The Bobbs-Merrill Company.

General Statutes of Connecticut Revised--1966. I, Connecticut: by the State.

General Statutes of Connecticut. XI, Bristol, Connecticut: Hildreth Press Incorporated.

General Statutes of North Carolina. IV-A, Charlottesville, Virginia: The Michie Company.

General Statutes of North Carolina. Sections 106-1 to 116211, Charlottesville, Virginia: The Michie Company.

Hawaii Revised Statutes. IV, Honolulu, Hawaii: by the State.

Idaho Code. I, Indianapolis, Indiana: The Bobbs-Merrill Company.

Illinois Annotated Statutes. Chicago, Illinois: Burdette Smith Company.

Iowa Code Annotated. I, XII, St. Paul, Minnesota: West Publishing Company.

Kansas Statutes Annotated. Constitutions volume, Topeka, Kansas: Robert Sanders, State Printer.

Kansas Statutes Annotated. V, Topeka, Kansas: by the State.

Kentucky Revised Statutes. I, II, Frankfort, Kentucky: by the State.

Laws of Maryland, 1933. Chapter 399, Baltimore, Maryland: Century Publishing Company.

Laws of Maryland, 1941. Chapter 140, Baltimore, Maryland: King Brothers, Inc.

Laws of Maryland, 1943. Chapter 618, Baltimore, Maryland: King Brothers, Inc.

-----, 1945. Chapter 977.

-----, 1947. Chapter 918.

-----, 1947. Chapter 910.

-----, 1948. Chapter 11.

-----, 1955. Chapter 403.

-----, 1955. Chapter 112.

-----, 1957. Chapter 70.

-----, 1961. Chapter 525.

-----, 1963. Chapter 854.

-----, 1970. Article 77.

Laws of Washington, 1969. I, Chapter 217, 1st Extra Session, Olympia, Washington: by the State.

Laws of Wisconsin, 1969. Chapter 55, Madison, Wisconsin: by the State.

Louisiana Revised Statutes. XIII, St. Paul, Minnesota: West Publishing Company.

McKinney's Consolidated Laws of New York Annotated, 1970. Book 16, St. Paul, Minnesota: West Publishing Company.

Maine Revised Statutes Annotated. I, XIV, St. Paul, Minnesota: West Publishing Company.

Michigan Statutes Annotated. I, XI, Mundelein, Illinois: Callaghan & Company.

Minnesota Statutes Annotated. I, X, St. Paul, Minnesota: West Publishing Company.

Mississippi Code Annotated--1942. I, V, Atlanta, Georgia: The Harrison Company.

Missouri Revised Statutes--1949. I, Jefferson City, Missouri: by the State.

Nevada Revised Statutes. V, Carson City, Nevada: by the State.



- New Hampshire Revised Statutes Annotated--1955. I, Rochester, New York: The Lawyer's Co-operative Publishing Company.
- New Hampshire Revised Statutes Annotated, 1964. II-A, Oxford, New Hampshire: Equity Publishing Corporation.
- New Jersey Statutes Annotated. Constitution volume, St. Paul, Minnesota: West Publishing Company.
- New Jersey Statutes Annotated. XVIII-A, Newark, New Jersey: Soney & Sage Company.
- New Mexico Statutes--1953. I, Indianapolis, Indiana: The Allen Smith Company.
- New York Statutes--Annotations--Forms. XII, Rochester, New York: The Lawyer's Co-operative Publishing Company.
- North Dakota Century Code Annotated. III, XIII, Indianapolis, Indiana: The Allen Smith Company.
- Ohio Revised Code. Cleveland, Ohio: by the Bureau of Code Revision.
- Oklahoma Statutes Annotated. Constitution volume for Articles I-IV, St. Paul, Minnesota: West Publishing Company.
- Oregon Revised Statutes. III, V, Salem, Oregon: by the State.
- Page's Ohio Revised Code Annotated. Titles 31, 33, 35, Cincinnati, Ohio: The W. H. Anderson Company.
- Public Acts--Connecticut--1969. Hartford, Connecticut: by the State.
- Public Acts--Connecticut--1967. Regular Session, Hartford, Connecticut: by the State.
- Public Acts of Louisiana, 1968. Louisiana: by the State.
- Public and Local Acts Michigan, 1955. Lansing Michigan: Speaker-Hines and Thomas, Incorporated.
- Public Laws of Pennsylvania--1968. Harrisburg, Pennsylvania: by the State.
- Purdon's Pennsylvania Statutes Annotated. Constitution volumes, and XXIV, Philadelphia, Pennsylvania: George T. Bisel Company.
- Revised Code of Montana--1947 Annotated. I, IV, Indianapolis, Indiana: The Allen Smith Company.
- Revised Code of Washington. Volume O, Washington: by the State.
- Revised Statutes of Nebraska--1943. II, Lincoln, Nebraska: by the State.

Smith-Hurd Illinois Annotated Statutes. Chapter 122, Chicago, Illinois: Burdette Smith Company.

South Dakota Code of 1939. II, Pierre, South Dakota: by the State.

South Dakota Compiled Laws--1967. X, Indianapolis, Indiana: The Allen Smith Publishers.

Tennessee Code Annotated. I, Indianapolis, Indiana: The Bobbs-Merrill Company, Inc.

The Constitution of the State of Hawaii. San Francisco, California: The Filmer Brothers Press.

Utah Code Annotated--1953. I, V-B, Indianapolis, Indiana: The Allen Smith Company.

Vermont Statutes Annotated. I, V, Oxford, New Hampshire: Equity Publishing Corporation.

Vernon's Constitution of the State of Texas Annotated. I, II, Kansas City, Missouri: Vernon Law Book Company.

West's Annotated California Code. Education Code, Sections 13801 to 20100, St. Paul, Minnesota: West Publishing Company.

West's Louisiana Statutes Annotated. I, II, III, St. Paul, Minnesota: West Publishing Company.

West Virginia Code. I, Charlottesville, Virginia: The Michie Company.

West Virginia Code. Chapters 18, 19, Charlottesville, Virginia: The Michie Company.

West's Wisconsin Statutes Annotated. I, V. St. Paul, Minnesota: West Publishing Company.

Wyoming Statutes--1957. I, Charlottesville, Virginia: The Michie Company.

2. Public Laws (United States Statutes at Large. Washington, D. C.: United States Government Printing Office.).

Public Laws: 78-346, 79-396, 81-152, 83-690, 85-664, 87-823, 88-665,  
89-10, 89-329, 89-358, 89-794, 91-295

3. Court Cases

Abington School District v. Schempp, 374 U. S. 203 (1963).

Barron v. Mayor of Baltimore, 32 U. S. 464 (1833).

- Board of Education v. Allen, 392 U. S. 236 (1968).
- Borden v. Louisiana State Board of Education, 281 U. S. 370 (1930).
- Bradfield v. Roberts, 175 U. S. 291 (1899).
- Cantwell v. Connecticut, 310 U. S. 296 (1940).
- Cochran v. Louisiana State Board of Education, 281 U. S. 370 (1930).
- DiCenso v. Robinson, Jr., case number 4239 (June 15, 1970).
- Engel et al. v. Vitale, 370 U. S. 421 (1962).
- Everson v. Board of Education, 330 U. S. 1 (1947).
- Flast et al. v. Cohen, 392 U. S. 83 (1968).
- Frothingham v. Mellon, 262 U. S. 447 (1923).
- Horace Mann League v. Board of Public Works, 242 Md. 645 (1965).
- Illinois ex rel. McCollum v. Board of Education, 333 U. S. 203 (1948).
- Johnson v. Sanders, case number 13432 (October 20, 1970).
- Lemon v. Kurtzman, 310 F. Supp. 35 (1969).
- Meyer v. Nebraska, 262 U. S. 390 (1923).
- Murray v. Curlett, 374 U. S. 203 (1963).
- Permoli v. First Municipality of New Orleans, 44 U. S. 588 (1845).
- Pierce v. Hill Military Academy, 262 U. S. 510 (1925).
- Pierce v. Society of Sisters, 262 U. S. 510 (1925).
- Quick Bear v. Leupp, 210 U. S. 50 (1908).
- Zorach et al. v. Clausen, 343 U. S. 306 (1952).

#### B. BOOKS

- Atchison, Rena M. Un-American Immigration: Its Present Effects and Future Perils. Chicago: no publisher given, 1894.
- Bosanquet, F. C. T. The Letters of Pliny The Younger. London: George Bell and Sons, 1908.

- Campbell, Ronald F., et al. The Organization and Control of American Schools. Ohio: Charles E. Merrill Publishing Company, 1970.
- Deferrari, Roy J. (ed.). Essays on Catholic Education in the United States. New York: Books for Libraries Press, 1969.
- Dostoyevsky, Fyodor. The Brothers Karamazov. New York: Random House, 1950.
- Fichter, Joseph H. Parochial Schools: A Sociological Study. Indiana: University of Notre Dame Press, 1958.
- Greeley, Andrew M., and Peter H. Rossi. The Education of Catholic Americans. Chicago: Aldine Publishing Company, 1966.
- Havighurst, Robert J., Bernice L. Neugarten, and Jacqueline M. Falk (ed.). Society and Education: A Book of Readings. Boston: Allyn, Inc., 1967.
- Henry, William W. Patrick Henry, Life, Correspondence, and Speeches. New York: Charles Scribner's Sons, 1891.
- Hunt, Gaillard, (ed.). The Writings of James Madison. New York: G. P. Putnam's Sons, 1783.
- Lannie, Vincent P. Public Money and Parochial Education. Cleveland: The Press of Case Western Reserve University, 1968.
- Lee, James Michael (ed.). Catholic Education in the Western World. Indiana: University of Notre Dame Press, 1967.
- Lipscomb, Andrew A., and Albert E. Bergh (ed.). The Writings of Thomas Jefferson. Washington, D. C.: The Thomas Jefferson Memorial Association, 1904.
- McCluskey, Neil G. Catholic Education in America: A Documentary History. New York: Columbia University Press, 1964.
- Morse, Samuel F. B. Foreign Conspiracy Against the Liberties of the United States. New York: Leavitt, Lord and Company, 1835.
- Neuwien, Reginald A. (ed.). Catholic Schools in Action. Indiana: University of Notre Dame Press, 1966.
- Perry, William Stevens. Historical Collections Relating to the American Colonial Church. Hartford, Connecticut: no publisher given, 1870.
- Prescott, William H. History of the Conquest of Mexico. Philadelphia: J. B. Lippincott & Co., 1843.
- Redden, John D., and Francis A. Ryan. A Catholic Philosophy of Education. Milwaukee: The Bruce Publishing Company, 1956.

Ryan, Mary Perkins, Are Parochial Schools the Answer? New York: Holt, Rinehart & Winston, Inc., 1964.

Seven Great Encyclicals. Glen Rock, New Jersey: Paulist Press, 1963.

Tyler, Moses C. Patrick Henry, American Statesmen. Boston: Houghton, Mifflin and Company, 1887.

#### C. ENCYCLOPEDIA ARTICLES

Bartos, Frantisek M. "Huss, John," Encyclopaedia Britannica (1968), XI, 910-911.

Drower, Margaret S. "Egypt," Encyclopaedia Britannica (1968), VIII, 52-56.

Hussey, Joan M. "Constantine," Encyclopaedia Britannica (1968), VI, 384-388.

Ladner, Gerhart B. "Gregory," Encyclopaedia Britannica (1968), X, 908-911.

Lanthers, Yvonne M. "Joan, Saint," Encyclopaedia Britannica (1968), XIII, 3-7.

Plumb, John H. "The Tudors (1485-1603)," Encyclopaedia Britannica (1968), VIII, 485-499.

Pollard, Albert F., and Richard B. Wernham. "Henry VIII," Encyclopaedia Britannica (1968), XI, 367-369.

Rupp, Ernest G. "Luther, Martin," Encyclopaedia Britannica (1968), XIV, 436-443.

Ryan, Edward A. "Inquisition," Encyclopaedia Britannica (1968), XII, 270-273.

Stone, Eric. "Becket, Thomas (A')," Encyclopaedia Britannica (1968), III, 353-354.

Walbank, Frank W. "Alexander III, called The Great," Encyclopaedia Britannica (1968), I, 571-576.

#### D. PERIODICALS

"Alternative Methods of Nonpublic Aid," Compact, IV (February, 1970), p. 23.

Conley, William H. "Financial Aid for our Schools," Catholic School Journal, LX (March, 1960), p. 10.

"Constitutional Revision--The Greatest Peril of All," Church & State, XXII (September, 1969), pp. 7-8.

Copeland, Edward J. "Purchasing Secular School Services," Compact, IV (February, 1970), pp. 29-31.

Koch, James H. "Tax Credits in New Mexico," Compact, IV (February, 1970), p. 28.

Ogilvie, Richard B. "Illinois Private Schools," Compact, IV (February, 1970), p. 35.

Patterson, Benton. "What's Behind the Shutdowns--and What's Ahead," School Management, XIII (April, 1969), pp. 47-53.

Robinson, Joseph B. "In Congress, the Legislatures and the Courts," Compact, IV (February, 1970), pp. 8-11.

Ryan, William. "Washington Report," Catholic School Journal, LXIX (December, 1969), pp. 6, 35.

"State Aid to Private Education: An Assessment," Compact, IV (February, 1970), pp. 18-23.

"Virginia Keeps Religious Freedom," Church & State, XXIII (April, 1970), p. 3.

#### E. PUBLICATIONS OF THE GOVERNMENT, LEARNED SOCIETIES, AND OTHER ORGANIZATIONS

U. S. Congressional Record, 44th Cong., 1st Sess. (1875), IV.

U. S. Congressional Record, 44th Cong., 1st Sess. (1876), IV.

Daniere, Andre L. and George F. Mandaus. "The Measurement of Alternative Costs of Educating Catholic School Children in Public Schools," (An unpublished report prepared by the Massachusetts Advisory Council on Education, March 1969).

Doerr, Edd. "To the Commission to Study State Aid to Nonpublic Education," (A statement made on behalf of the American Civil Liberties Union, Baltimore, October 6, 1969).

"Financial Status of the Public Schools--1968," Research Division of the National Education Association. Washington, D. C.: NEA, 1968.

Hening Statutes of Virginia. XII., (1823).

Koob, Albert C. "Financial Problems of Parochial Schools," (New York: National Conference on School Finance, 1968). (Mimeographed).

O'Brien, William. "The States and 'No Establishment': Proposed Amendments to the Constitution Since 1789," Topeka, Kansas: National Organization on Legal Problems of Education, 1965.

"President Calls for Broad Elementary, Secondary and College Educational Aid Programs," Congressional Quarterly Almanac, XXI (Washington, D. C.: Congressional Quarterly Service, 1965).

"Public Aid to Religiously Affiliated Schools--The Record of the State Legislatures in 1969," (New York: Commission on Law and Social Action of the American Jewish Congress, 1969) (Mimeographed).

"Rankings of the States, 1967," Research Division of the National Education Association. Washington, D. C.: NEA, 1967.

"The State of the Schools," (New York: New York State Council of Catholic School Superintendents, September 1, 1969) (Mimeographed).

U. S. Constitution, "Bill of Rights," Amendment I.

U. S. Constitution, Amendment XIV.

#### F. MISCELLANEOUS REFERENCES

Associated Press dispatch, New York Times, October 17, 1970.

St. Matthew, 22:17.

St. Matthew, 22:21.

#### G. RESEARCH AIDS

American Digest System. By the publisher's editorial staff, St. Paul, Minnesota, West Publishing Company, including the following:

Century Digest. XLIII. Digest of all reported cases to 1897.

First Decennial Digest. XVII. Digest of all reported cases from 1897 to 1906.

Second Decennial Digest. XX. Digest of all reported cases from 1907-1916.

Third Decennial Digest. XXIV. Digest of all reported cases from 1916 to 1926.

Fourth Decennial Digest. XXVII. Digest of all reported cases from 1926 to 1936.

Fifth Decennial Digest. XXXIX. Digest of all reported cases from 1936 to 1946.

Sixth Decennial Digest. XXVI. Digest of all reported cases from 1946 to 1956.

Seventh Decennial Digest. XXVII. Digest of all reported cases from 1956 to 1966.

General Digest. Published annually since 1966 and continuing the Digest to date.

American Law Reports. V, CXLI. By the publisher's editorial staff, Rochester, New York, Lawyer's Cooperative Publishing Company. Published annually since 1919. Includes all cases bearing on sectarianism in any way in the schools, up to 1920.

Corpus Juris Secundum. LXXVIII, LXXIX. Edited by Francis J. Ludes and Harold J. Gilbert. New York: The American Law Book Company.

Federal Digest. LVII. By the publisher's editorial staff. St. Paul, Minnesota: West Publishing Company. Reports on all cases from 1754 to date.

Modern Federal Practice Digest. By the publisher's editorial staff. St. Paul, Minnesota: West Publishing Company. Reports on all federal cases, including Supreme Court cases.

National Reporter System. Contains reports in full of decisions of the courts of record of the various states, and of the federal courts. St. Paul, Minnesota: West Publishing Company, 1879, and published to date with weekly advance sheets. The reporter used included,

The Federal Reporter. Established 1888. Reports fully all decisions of the United States Circuit, District and Circuit Court of Appeals.

United States Reports. Washington, D. C.: Government Printing Office.



## APPENDICES

## APPENDIX A

### CHAPTER II

## TO THE EMPEROR TRAJAN

It is my invariable rule, Sir, to refer to you in all matters where I feel doubtful; for who is more capable of removing my scruples, or informing my ignorance? Having never been present at any trials concerning those who profess Christianity, I am unacquainted not only with the nature of their crimes, or the measure of their punishment, but how far it is proper to enter into an examination concerning them. Whether, therefore, any difference is usually made with respect to ages, or no distinction is to be observed between the young and the adult; whether repentance entitles them to a pardon; or if a man has been once a Christian, it avails nothing to desist from his error; whether the very profession of Christianity, unattended with any criminal act, or only the crimes themselves inherent in the profession are punishable; on all these points I am in great doubt. In the meanwhile, the method I have observed towards those who have been brought before me as Christians is this: I asked them whether they were Christians; if they admitted it, I repeated the question twice, and threatened them with punishment; if they persisted, I ordered them to be at once punished: for I was persuaded, whatever the nature of their opinions might be, a contumacious and inflexible obstinacy certainly deserved correction. There were others also brought before me possessed with the same infatuation, but being Roman citizens, I directed them to be sent to Rome. But this crime spreading (as is usually the case) while it was actually under prosecution, several instances of the same nature occurred. An anonymous information was laid before me, containing a charge against several persons, who upon examination denied they were Christians, or has ever been so. They repeated after me an invocation to the gods, and

offered religious rites with wine and incense before your statue (which for that purpose I had ordered to be brought, together with those of the gods), and even reviled the name of Christ: whereas there is no forcing, it is said, those who are really Christians into any of these compliances: I thought it proper, therefore, to discharge them. Some among those who were accused by a witness in person at first confessed themselves Christians, but immediately after denied it: the rest owned indeed that they had been of that number formerly, but had now (some above three, others more, and a few above twenty years ago) renounced that error. They all worshipped your statue and the images of the gods, uttering imprecations at the same time against the name of Christ. They affirmed the whole of their guilt, or their error, was, that they met on a stated day before it was light, and addressed a form of prayer to Christ, as to a divinity, binding themselves by a solemn oath, not for the purposes of any wicked design, but never to commit any fraud, theft, or adultery, never to falsify their word, nor deny a trust when they should be called upon to deliver it up; after which it was their custom to separate, and then reassemble, to eat in common a harmless meal. From this custom, however, they desisted after the publication of my edict, by which, according to your commands, I forbade the meeting of any assemblies. After receiving this account, I judged it so much the more necessary to endeavour to extort the real truth, by putting two female slaves to the torture, who were said to officiate in their religious rites: but all I could discover was evidence of an absurd and extravagant superstition. I deemed it expedient, therefore, to adjourn all further proceedings, in order to consult you. For it appears to be a matter highly deserving your consideration, more

especially as great numbers must be involved in the danger of these prosecutions, which have already extended, and are still likely to extend, to persons of all ranks and ages, and even of both sexes. In fact, this contagious superstition is not confined to the cities only, but has spread its infection among the neighbouring villages and country. Nevertheless, it still seems possible to restrain its progress. The temples, at least, which were once almost deserted, begin now to be frequented; and the sacred rites, after a long intermission, are again revived; while there is a general demand for the victims, which till lately found very few purchasers. From all this it is easy to conjecture what numbers might be reclaimed if a general pardon were granted to those who shall repent of their error.

#### TRAJAN TO PLINY

You have adopted the right course, my dearest Secundus in investigating the charges against the Christians who were brought before you. It is not possible to lay down any general rule for all such cases. Do not go out of your way to look for them. If indeed they should be brought before you, and the crime is proved, they must be punished; with the restriction, however, that where the party denies he is a Christian, and shall make it evident that he is not, by invoking our gods, let him (notwithstanding any former suspicion) be pardoned upon his repentance. Anonymous informations ought not to be received in any sort of prosecution. It is introducing a very dangerous precedent, and is quite foreign to the spirit of our age.

Taken from Bosanquet, F.C.T.  
The Letters of Pliny The Younger. London: George Bell and Sons, 1908.

A BILL ESTABLISHING A PROVISION FOR TEACHERS  
OF THE CHRISTIAN RELIGION

Whereas the general diffusion of Christian knowledge hath a natural tendency to correct the morals of men, restrain their vices, and preserve the peace of society; which cannot be effected without a competent provision of learned teachers, who may be thereby enabled to devote their time and attention to the duty of instructing such citizens, as from their circumstances and want of education, cannot otherwise attain such knowledge; and it is judged that such provision may be made by the Legislature, without counteracting the liberal principle heretofore adopted and intended to be preserved by abolishing all distinctions of pre-eminence amongst the different societies or communities of Christians;

Be it therefore enacted by the General Assembly, That for the support of Christian teachers, \_\_\_per centum on the amount, or \_\_\_in the pound on the sum payable for tax on the property within this Commonwealth, is hereby assessed, and shall be paid by every person chargeable with the said tax at the time the same shall become due; and the Sheriffs of the several Counties shall have power to levy and collect the same in the same manner and under the like restrictions and limitations, as are or may be prescribed by the laws for raising the Revenues of this State.

And be it enacted, That for every sum so paid, the Sheriff or Collector shall give a receipt, expressing therein to what society of Christians the person from whom he may receive the same shall direct the money to be paid, keeping a distinct account thereof in his books. The Sheriff of every County, shall, on or before the--\_\_\_day of \_\_\_--in every year,

return to the Court, upon oath, two alphabetical lists of the payments to him made, distinguishing in columns opposite to the names of the persons who shall have paid the same, the society to which the money so paid was by them appropriated; and one column for the names where no appropriation shall be made. One of which lists, after being recorded in a book to be kept for that purpose, shall be filed by the Clerk in his office; the other shall by the Sheriff be fixed up in the Court-house, there to remain for the inspection of all concerned. And the Sheriff, after deducting five per centum for the collection, shall forthwith pay to such person or persons as shall be appointed to receive the same by the Vestry, Elders, or Directors, however denominated of each such society, the sum so stated to be due to that society; or in default thereof, upon the motion of such person or persons to the next or any succeeding Court, execution shall be awarded for the same against the Sheriff and his security, his and their executors or administrators; provided that ten days previous notice be given of such motion. And upon every such execution, the Officer serving the same shall proceed to immediate sale of the estate taken, and shall not accept of security for payment at the end of three months, nor to have the goods forthcoming at the day of sale; for his better direction wherein, the Clerk shall endorse upon every such execution that no security of any kind shall be taken.

And be it further enacted, That the money to be raised by virtue of this Act, shall be by the Vestries, Elders, or Directors of each religious society, appropriated to a provision for a Minister or Teacher of the Gospel of their denomination, or the providing places of divine worship, and to none other use whatsoever; except in the denominations of Quakers and

Menonists, who may receive what is collected from their members, and place it in their general fund, to be disposed of in a manner which they shall think best calculated to promote their particular mode of worship.

And be it enacted, That all sums which at the time of payment to the Sheriff or Collector may not be appropriated by the person paying the same, shall be accounted for with the Court in manner as by this Act is directed; and after deducting for his collection, the Sheriff shall pay the amount thereof (upon account certified by the Court to the Auditors of Public Accounts, and by them to the Treasurer) into the public Treasury, to be disposed of under the direction of the General Assembly, for the encouragement of seminaries of learning within the Counties whence such sums shall arise, and to no other use or purpose whatsoever.

THIS Act shall commence, and be in force, from and after the day of \_\_\_\_\_ in the year \_\_\_\_\_

John Beckley, C. H. D.

Taken from the dissenting  
opinion of Mr. Justice  
Rutledge in Everson v.  
Board of Education, 330  
U.S. 1, 72-74.



APPENDIX B

CHAPTER III

## APPENDIX B

STATE CONSTITUTIONAL AND STATUTORY PROVISIONS  
RELATED TO THE PROHIBITION OF USING  
PUBLIC FUNDS FOR RELIGIOUS SCHOOLS

## ALABAMA

## Preamble

We the people of the State of Alabama, in order to establish justice, insure domestic tranquility and secure the blessings of liberty to ourselves and our posterity, invoking the favor and guidance of Almighty God, do ordain and establish the following Constitution and form of government for the State of Alabama.

## Article I

## Declaration of Rights

3. That no religion shall be established by law; that no preference shall be given by law to any religious sect, society, denomination or mode of worship; that no one shall be compelled by law to attend any place of worship; nor to pay any tithes, taxes or other rates for building or repairing any place of worship, or for maintaining any minister or ministry; that no religious test shall be required as a qualification to any office of public trust under this State; and that the civil rights, privileges and capacities of any citizen shall not be in any manner affected by his religious principles.

## Article XIV

## Education

263. No money raised for the support of the public schools shall be appropriated to or used for the support of any sectarian or denominational school.

## ALASKA

## Preamble

We the people of Alaska, grateful to God and to those who founded our nation and pioneered this great land, in order to secure and transmit to succeeding generations our heritage of political, civil, and religious liberty within the Union of States, do ordain and establish this constitution for the State of Alaska.

## Article I

## Declaration of Rights

## Freedom of Religion:

Section 4. No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof.

## Article VII

## Health, Education, and Welfare

## Public Education:

Section 1. The legislature shall by general law establish and maintain a system of public schools open to all children of the State, and may provide for other public educational institutions. Schools and institutions

so established shall be free from sectarian control. No money shall be paid from public funds for the direct benefit of any religious or other private educational institution.

## ARIZONA

### Preamble

We, the people of the State of Arizona, grateful to Almighty God for our liberties, do ordain this Constitution.

## Article II

### Declaration of Rights

Section 12. The liberty of conscience secured by the provisions of this Constitution shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace and safety of the State. No public money or property shall be appropriated for or applied to any religious worship, exercise, or instruction, or to the support of any religious establishment. No religious qualification shall be required for any public office or employment, nor shall any person be incompetent as a witness or juror in consequence of his opinion on matters of religion, nor be questioned touching his religious belief in any court of justice to affect the weight of his testimony.

## Article IX

### Public Debt, Revenue, and Taxation

Section 10. No tax shall be laid or appropriation of public money made in aid of any church, or private or sectarian school, or any public service corporation.

## Article XI

## Education

Section 7. No sectarian instruction shall be imparted in any school or State educational institution that may be established under this Constitution, and no religious or political test or qualification shall ever be required as a condition of admission into any public educational institution of the State, as teacher, student, or pupil; but the liberty of conscience hereby secured shall not be so construed as to justify practices or conduct inconsistent with the good order, peace, morality, or safety of the State, or with the rights of others.

## Article XX

## Ordinance

The following ordinance shall be irrevocable without the consent of the United States and the people of this State:

First. Perfect toleration of religious sentiment shall be secured to every inhabitant of this State, and no inhabitant of this State shall ever be molested in person or property on account of his or her mode of religious worship, or lack of the same.

Seventh. Provisions shall be made by law for the establishment and maintenance of a system of public schools which shall be open to all the children of the State and be free from sectarian control, and said schools shall always be conducted in English.

## ARKANSAS

## Preamble

We, the people of the State of Arkansas, grateful to Almighty God for the privilege of choosing our own form of government, for our civil and religious liberty, and desiring to perpetuate its blessings and secure the same to ourselves and posterity, do ordain and establish this Constitution.

## Article II

## Declaration of Rights

Section 24. All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; no man can, of right, be compelled to attend, erect or support any place of worship; or to maintain any ministry against his consent. No human authority can, in any case or manner whatsoever, control or interfere with the right of conscience; and no preference shall ever be given, by law, to any religious establishment, denomination or mode of worship above any other.

Section 25. Religion, morality and knowledge being essential to good government, the General Assembly shall enact suitable laws to protect every religious denomination in the peaceable enjoyment of its own mode of public worship.

Section 26. No religious test shall ever be required of any person as a qualification to vote or hold office, nor shall any person be rendered incompetent to be a witness on account of his religious belief;

but nothing herein shall be construed to dispense with oaths or affirmations.

## Article XIV

### Education

Section 1. Free School system.--Intelligence and virtue being the safeguards of liberty and the bulwark of a free and good government, the State shall ever maintain a general, suitable and efficient system of free public schools and shall adopt all suitable means to secure to the people the advantages and opportunities of education. The specific intention of this amendment is to authorize that in addition to existing constitutional or statutory provisions the General Assembly and/or public school districts may spend public funds for the education of persons over twenty-one (21) years of age and under six (6) years of age, as may be provided by law, and no other interpretation shall be given to it.

Section 2. No money or property belonging to the public school fund, or to this State for the benefit of schools or universities, shall ever be used for any other than the respective purposes to which it belongs.

## CALIFORNIA

### Preamble

We, the People of the State of California, grateful to Almighty God for our freedom, in order to secure and perpetuate its blessings, do establish this Constitution.

## Article I

## Declaration of Rights

## Liberty of Conscience

Section 4. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be guaranteed in this State; and no person shall be rendered incompetent to be a witness or juror on account of his opinions on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this State.

## Article IV

## Legislative Department

## Public Aid for Sectarian Purposes Prohibited

Section 30. Neither the Legislature, nor any county, city and county, township, school district or other municipal corporation, shall ever make an appropriation, or pay from any public fund whatever, or grant anything to or in aid of any religious sect, church, creed, or sectarian purpose or help to support or sustain any school, college, university, hospital, or other institution controlled by any religious creed, church, or sectarian denomination whatever; nor shall any grant or donation of personal property or real estate ever be made by the State, or any city, city and county, town, or other municipal corporation for any religious creed, church, or sectarian purpose whatever...

## Article IX



## Education

## No Public Money for Sectarian Schools

Section 8. No public money shall ever be appropriated for the support of any sectarian or denominational school, or any school not under the exclusive control of the officers of the public schools; nor shall any sectarian or denominational doctrine be taught, or instruction thereon be permitted, directly or indirectly, in any of the common schools of this State.

## COLORADO

## Preamble

We, the people of Colorado, with profound reverence for the Supreme Ruler of the Universe, in order to form a more independent and perfect government; establish justice; insure tranquility; provide for the common defense; promote the general welfare and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution for the "State of Colorado."

## Article II

## Bill of Rights

Section 4. Religious freedom.--That the free exercise and enjoyment of religious profession and worship, without discrimination, shall forever hereafter be guaranteed; and no person shall be denied any civil or political right, privilege or capacity, on account of his opinions concerning religion; but the liberty of conscience hereby secured shall not be construed to dispense with oaths or affirmations, excuse acts of

licentiousness or justify practices inconsistent with the good order, peace or safety of the state. No person shall be required to attend or support any ministry or place of worship, religious sect or denomination against his consent. Nor shall any preference be given by law to any religious denomination or mode of worship.

## Article V

### Legislative Department

Section 34. Appropriations to private institutions forbidden.-- No appropriation shall be made for charitable, industrial, educational or benevolent purposes to any person, corporation or community not under the absolute control of the state, nor to any denominational or sectarian institution or association.

## Article IX

### Education

Section 7. Aid to private schools, churches, etc., forbidden.-- Neither the general assembly, nor any county, city, town, township, school district or other public corporation, shall ever make any appropriation, or pay from any public fund or moneys whatever, anything in aid of any church or sectarian society, or for any sectarian purpose, or to help support or sustain any school, academy, seminary, college, university or other literary or scientific institution, controlled by any church or sectarian denomination whatsoever; nor shall any grant or donation of land, money or other personal property, ever be made by the state, or any such public corporation, to any church, or for any sectarian purpose.

Section 8. Religious test and race discrimination forbidden--Sectarian tenets.--No religious test or qualification shall ever be required of any person as a condition of admission into any public educational institution of the state, either as a teacher or student; and no teacher or student of any such institution shall ever be required to attend or participate in any religious service whatever. No sectarian tenets or doctrines shall ever be taught in the public schools, nor shall any distinction or classification of pupils be made on account of race or color.

## CONNECTICUT

### Preamble

The People of Connecticut acknowledging with gratitude, the good providence of God, in having permitted them to enjoy a free government; do, in order more effectually to define, secure, and perpetuate the liberties, rights and privileges which they have derived from their ancestors; hereby, after a careful consideration and revision, ordain and establish the following constitution and form of civil government.

### Article First

#### Declaration of Rights

Section 3. The exercise and enjoyment of religious profession and worship, without discrimination, shall forever be free to all persons in the state; provided, that the right hereby declared and established, shall not be so construed as to excuse acts of licentiousness, or to justify practices inconsistent with the peace and safety of the state.

## Article Seventh

## Of Religion

It being the right of all men to worship the Supreme Being, the Great Creator and Preserver of the Universe, and to render that worship in a mode consistent with the dictates of their consciences, no person shall by law be compelled to join or support, nor be classed or associated with, any congregation, church or religious association. No preference shall be given by law to any religious society or denomination in state. Each shall have and enjoy the same and equal powers, rights and privileges, and may support and maintain the ministers or teachers of its society or denomination, and may build and repair houses for public worship.

## Article Eighth

## Of Education

Section 4. The fund, called the SCHOOL FUND, shall remain a perpetual fund, the interest of which shall be inviolably appropriated to the support and encouragement of the public schools throughout the state, and for the equal benefit of all the people thereof. The value and amount of said fund shall be ascertained in such manner as the general assembly may prescribe, published, and recorded in the comptroller's office; and no law shall ever be made, authorizing such fund to be diverted to any other use than the encouragement and support of public schools, among the several school societies, as justice and equity shall require.

## DELAWARE

## Preamble

Through Divine goodness, all men have by nature the rights of worshipping and serving their Creator according to the dictates of their consciences, of enjoying and defending life and liberty, of acquiring and protecting reputation and property, and in general of obtaining objects suitable to their condition, without injury by one to another; and as these rights are essential to their welfare, for due exercise thereof, power is inherent in them; and therefore all just authority in the institutions of political society is derived from the people, and established with their consent, to advance their happiness; and they may for this end, as circumstances require, from time to time, alter their Constitution of government.

## Article I

## Bill of Rights

## 1. Freedom of religion

Section I. Although it is the duty of all men frequently to assemble together for the public worship of Almighty God; and piety and morality, on which the prosperity of communities depends are hereby promoted; yet no man shall or ought to be compelled to attend any religious worship, to contribute to the erection or support of any place of worship, or to the maintenance of any ministry, against his own free will and consent; and no power shall or ought to be vested in or assumed by any magistrate that shall in any case interfere with, or in any manner control the rights of conscience, in the free exercise or religious worship, nor a preference given by law to any religious societies, denominations, or modes of worship.

## Article X

## Education

3. Use of educational funds by religious schools; exemption of school property from taxation

Section 3. No portion of any fund now existing, or which may hereafter be appropriated, or raised by tax, for educational purposes, shall be appropriated to, or used by, or in aid of any sectarian, church or denominational school; provided, that all real or personal property used for school purposes, where the tuition is free, shall be exempt from taxation and assessment for public purposes.

4. Use of Public School Fund

Section 4. No part of the principal or income of the Public School Fund, now or hereafter existing, shall be used for any other purpose than the support of free public schools.

Section 5. The General Assembly, notwithstanding any other provision of this Constitution, may provide by an Act of the General Assembly, passed with the concurrence of a majority of all the members elected to each House, for the transportation of students of non-public Elementary and High Schools.

## FLORIDA

## Preamble

We, the people of the State of Florida, being grateful to Almighty God for our constitutional liberty, in order to secure its benefits, form

a more perfect government, insure domestic tranquility, maintain public order, and guarantee equal civil and political rights to all, do ordain and establish this constitution.

#### Article I

Section 3. There shall be no law respecting the establishment of religion or prohibiting or penalizing the free exercise thereof. Religious freedom shall not justify practices inconsistent with public morals peace or safety. No revenue of the state or any political subdivision or agency thereof shall ever be taken from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution

#### Article IX

Section 6. The income derived from the state school fund shall, and the principal of the fund may, be appropriated, but only to the support and maintenance of free public schools.

#### GEORGIA

#### Preamble

To perpetuate the principles of free government, insure justice to all, preserve peace, promote the interest and happiness of the citizen, and transmit to posterity the enjoyment of liberty, we, the people of Georgia, relying upon the protection and guidance of Almighty God, do ordain and establish this Constitution.

#### Article I

## Bill of Rights

## Section I.

Paragraph XII. Freedom of conscience. All men have the natural and inalienable right to worship God, each according to the dictates of his own conscience, and no human authority should, in any case, control or interfere with such right of conscience.

Paragraph XIII. Religious opinions; liberty of conscience. No inhabitant of this State shall be molested in person or property, or prohibited from holding any public office, or trust, on account of his religious opinions; but the right of liberty of conscience shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace and safety of the State.

Paragraph XIV. Appropriations to churches, sects, etc., forbidden. No money shall ever be taken from the public Treasury, directly or indirectly, in aid of any church, sect, or denomination of religionists, or of any sectarian institution.

## HAWAII

## Preamble

We, the people of the State of Hawaii, grateful for Divine Guidance, and mindful of our Hawaiian heritage, reaffirm our belief in a government of the people, by the people and for the people, and with an understanding heart toward all the peoples of the earth, do hereby ordain and establish this constitution for the State of Hawaii.



## Article I

### Bill of Rights

#### Freedom of Religion, Speech, Press, Assembly and Petition

Section 3. No law shall be enacted respecting an establishment of religion or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press, or the right of the people peaceably to assemble and to petition the government for a redress of grievances.

## Article VI

### Taxation and Finance

#### Appropriations for Private Purposes Prohibited

Section 6. No tax shall be levied or appropriation of public money or property made, nor shall the public credit be used, directly or indirectly, except for a public purpose. No grant shall be made in violation of Section 3 of Article I of this constitution.

## Article IX

### Education

#### Public Education

Section 1. The State shall provide for the establishment, support and control of a statewide system of public schools free from sectarian control, a state university, public libraries and such other educational institutions as may be deemed desirable, including physical facilities therefor. There shall be no segregation in public educational institutions because of race, religion or ancestry; nor shall public funds be appropriated for the support or benefit of any sectarian or private educational institution.

## IDAHO

## Preamble

We, the people of the state of Idaho, grateful to Almighty God for our freedom, to secure its blessings and promote our common welfare do establish this Constitution.

## Article IX

## Education and School Lands

5. Sectarian appropriations prohibited.--Neither the legislature nor any county, city, town, township, school district, or other public corporation, shall ever make any appropriation, or pay from any public fund or moneys whatever, anything in aid of any church or sectarian or religious society, or for any sectarian or religious purpose, or to help support or sustain any school, academy, seminary, college, university or other literary or scientific institution, controlled by any church, sectarian or religious denomination whatsoever; nor shall any grant or donation of land, money or other personal property ever be made by the state, or any such public corporation, to any church or for any sectarian or religious purpose.

6. Religious test and teaching in school prohibited.--No religious test or qualification shall ever be required of any person as a condition of admission into any public educational institution of the state, either as teacher or student; and no teacher or student of any such institution shall ever be required to attend or participate in any religious service whatever. No sectarian or religious tenents or doctrines shall ever be taught in the public schools, nor shall any distinc-

tion or classification of pupils be made on account of race or color. No books, papers, tracts or documents of a political, sectarian or denominational character shall be used or introduced in any schools established under the provisions of this article, nor shall any teacher or any district receive any of the public school moneys in which the schools have not been taught in accordance with the provisions of this article.

## ILLINOIS

### Preamble

We, the people of the State of Illinois--grateful to Almighty God for the civil, political and religious liberty which He hath so long permitted us to enjoy, and looking to Him for a blessing upon our endeavors to secure and transmit the same unimpaired to succeeding generations--in order to form a more perfect government, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity; do ordain and establish this Constitution for the State of Illinois.

## Article II

### Bill of Rights

Inherent and Inalienable Rights.  
Religious Freedom.

3. The free exercise and enjoyment of religious profession and worship, without discrimination, shall forever be guaranteed; and no person shall be denied any civil or political right, privilege or capacity, on account of his religious opinions; but the liberty of conscience hereby secured shall not be construed to dispense with oaths or affirmations,

excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of the State. No person shall be required to attend or support any ministry or place of worship against his consent, nor shall any preference be given by law to any religious denomination or mode of worship.

## Article VIII

### Education

#### Free Schools.

1. The General Assembly shall provide a thorough and efficient system of free schools, whereby all children of this State may receive a good common school education.

#### Public Funds for Sectarian Purposes Forbidden.

3. Neither the General Assembly nor any county, city, town, township, school district, or other public corporation, shall ever make any appropriation or pay from any public fund whatever, anything in aid of any church or sectarian purpose, or to help support or sustain any school, academy, seminary, college, university, or other literary or scientific institution, controlled by any church or sectarian denomination whatever; nor shall any grant or donation of land, money, or other personal property ever be made by the State, or any such public corporation, to any church, or for any sectarian purpose.

## INDIANA

### Preamble

To the end that justice be established, public order maintained,

and liberty perpetuated: We, the people of the State of Indiana, grateful to Almighty God for the free exercise of the right to choose our own form of government, do ordain this Constitution.

## Article I

### Bill of Rights

Section 2. All men shall be secured in the natural right to worship Almighty God, according to the dictates of their own consciences.

Section 3. No law shall, in any case whatever, control the free exercise and enjoyment of religious opinions, or interfere with the rights of conscience.

Section 4. No preference shall be given, by law, to any creed, religious society, or mode of worship; and no man shall be compelled to attend, erect, or support, any place of worship, or to maintain any ministry, against his consent.

Section 5. No religious test shall be required, as a qualification for any office of trust or profit.

Section 6. No money shall be drawn from the treasury, for the benefit of any religious or theological institution.

Section 7. No person shall be rendered incompetent as a witness, in consequence of his opinions on matters of religion.

## Article 8

### Education

Section 3. The principal of the Common School fund shall remain

a perpetual fund, which may be increased, but shall never be diminished; and the income thereof shall be inviolably appropriated to the support of Common Schools, and to no other purpose whatever.

## IOWA

### Preamble

WE, THE PEOPLE OF THE STATE OF IOWA, grateful to the Supreme Being for the blessings hitherto enjoyed, and feeling our dependence on Him for a continuation of those blessings, do ordain and establish a free and independent government, by the name of the STATE OF IOWA, the boundaries whereof shall be as follows:...

## Article I

### Bill of Rights

Section 3. The General Assembly shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; nor shall any person be compelled to attend any place of worship, pay tithes, taxes, or other rates for building or repairing places of worship, or the maintenance of any minister, or ministry.

Section 4. No religious test shall be required as a qualification for any office or public trust, and no person shall be deprived of any of his rights, privileges, or capacities, or disqualified from the performance of any of his public or private duties, or rendered incompetent to give evidence in any court of law or equity, in consequence of his opinions on the subject of religion; and any part to any judicial proceedings shall have the right to use as a witness, or take the testimony of, any other person not disqualified on account of interest, who may be

cognizant of any fact material to the case; and parties to suits may be witnesses, as provided by law.

## KANSAS

### Preamble

We, the people of Kansas, grateful to Almighty God for our civil and religious privileges, in order to insure the full enjoyment of our rights as American citizens, do ordain and establish this constitution of the state of Kansas, with the following boundaries, to wit:...

### Bill of Rights

7. Religious liberty. The right to worship God according to the dictates of conscience shall never be infringed; nor shall any person be compelled to attend or support any form of worship; nor shall any control of or interference with the rights of conscience be permitted, nor any preference be given by law to any religious establishment or mode of worship. No religious test or property qualification shall be required for any office of public trust, nor for any vote at any election, nor shall any person be incompetent to testify on account of religious belief.

## Article VI

### Education

6 (c). No religious sect or sects shall control any part of the public educational funds.

## KENTUCKY

### Preamble

We, the people of the Commonwealth of Kentucky, grateful to Almighty

God for the civil, political and religious liberties we enjoy, and invoking the continuance of these blessings, do ordain and establish this Constitution.

### Bill of Rights

That the great and essential principles of liberty and free government may be recognized and established, we declare that:

Section 1. Rights of life, liberty, worship, pursuit of safety and happiness, free speech, acquiring and protecting property, peaceable assembly, redress of grievances, bearing arms. All men are, by nature, free and equal, and have certain inherent and inalienable rights, among which may be reckoned:

First: The right of enjoying and defending their lives and liberties.

Second: The right of worshipping Almighty God according to the dictates of their consciences.

Section 5. Right of religious freedom. No preference shall ever be given by law to any religious sect, society or denomination; nor to any particular creed, mode of worship or system of ecclesiastical polity; nor shall any person be compelled to attend any place of worship, to contribute to the erection or maintenance of any such place, or to the salary or support of any minister of religion; nor shall any man be compelled to send his child to any school to which he may be conscientiously opposed; and the civil rights, privileges or capacities of no person shall be taken away, or in anywise diminished or enlarged, on account of his belief or disbelief of any religious tenet, dogma or teaching. No human



authority shall in any case whatever, control or interfere with the rights of conscience.

#### Education

157.330 (2). The resources of the public school foundation program fund shall be paid into the State Treasury, and shall be drawn out or appropriated only in aid of public schools as provided by statute.

#### LOUISIANA

#### Preamble

We, the people of the State of Louisiana, grateful to Almighty God for the civil, political and religious liberties we enjoy, and desiring to secure the continuance of these blessings, do ordain and establish this Constitution.

#### Bill of Rights

#### 4. Freedom of Religion

Section 4. Every person has the natural right to worship God according to the dictates of his own conscience. No law shall be passed respecting an establishment of religion, nor prohibiting the free exercise thereof; nor shall any preference ever be given to, nor any discrimination be made against, any church, sect, or creed of religion, or any form of religious faith or worship.

#### Article IV

Section 8. Public funds; prohibited expenditure for sectarian, private, charitable or benevolent purposes; state charities; religious discrimination.

Section 8. No money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, sect or denomination of religion, or in aid of any priest, preacher, minister or teacher thereof, as such, and no preference shall ever be given to, nor any discrimination made against, any church, sect or creed of religion, or any form of religious faith or worship. No appropriation from the State treasury shall be made for private, charitable or benevolent purposes to any person or community; provided, this shall not apply to the State Asylums for the Insane, and the State Schools for the Deaf and Dumb, and the Blind, and the Charity Hospitals, and public charitable institutions conducted under State authority.

#### Article XII

13. No appropriation of public funds for private or sectarian schools.

Section 13. No appropriation of public funds shall be made to any private or sectarian school. The Legislature may enact appropriate legislation to permit institutions of higher learning which receive all or part of their support from the State of Louisiana to engage in interstate and intrastate education agreements with other state governments, agencies of other state governments, institutions of higher learning of other state governments and private institutions of higher learning within or outside state boundaries.

#### Article XIV

15. Civil service system; state; cities

Section 15 (A) (1). Appointments and promotions; examinations; discriminations. (As amended Acts 1952, No. 18)...No person in the "State"

or "City Classified Service", having gained civil service status shall be discriminated against or subjected to any disciplinary action except for cause, and no person in the State of City Classified Service shall be discriminated against or subjected to any disciplinary action for political or religious reasons, and all such persons shall have the right of appeal from such action.

## MAINE

### Preamble

Objects of government.

We the people of Maine, in order to establish justice, insure tranquillity, provide for our mutual defence, promote our common welfare, and secure to ourselves and our posterity the blessings of liberty, acknowledging with grateful hearts the goodness of the Sovereign Ruler of the Universe in affording us an opportunity, so favorable to the design; and imploring His aid and direction in its accomplishment, do agree to form ourselves into a free and independent State, by the style and title of the State of Maine, and do ordain and establish the following Constitution for the government of the state.

## Article I

### Declaration of Rights

Religious freedom.

Section 3. All men have a natural and unalienable right to worship Almighty God according to the dictates of their own consciences, and no one shall be hurt, molested or restrained in his person, liberty

or estate for worshipping God in the manner and season most agreeable to the dictates of his own conscience, nor for his religious professions or sentiments, provided he does not disturb the public peace, nor obstruct others in their religious worship;--and all persons demeaning themselves peaceably, as good members of the state, shall be equally under the protection of the laws, and no subordination nor preference of any one sect or denomination to another shall ever be established by law, nor shall any religious test be required as a qualification for any office or trust, under this State; and all religious societies in this State, whether incorporate or unincorporate, shall at all times have the exclusive right of electing their public teachers, and contracting with them for their support and maintenance.

## MARYLAND

### Declaration of Rights

We, the People of the State of Maryland, grateful to Almighty God for our civil and religious liberty, and taking into our serious consideration the best means of establishing a good Constitution in this State for the sure foundation and more permanent security thereof, declare:

Article 36. That as it is the duty of every man to worship God in such manner as he thinks most acceptable to Him, all persons are equally entitled to protection in their religious liberty; wherefore, no person ought by any law to be molested in his person or estate, on account of his religious persuasion, or profession, or for his religious practice, unless, under the color of religion, he shall disturb the good order, peace or safety of the State, or shall infringe the laws of morality, or injure others in their natural, civil or religious rights; nor ought any

person to be compelled to frequent, or maintain, or contribute, unless on contract, to maintain any place of worship, or any ministry; nor shall any person, otherwise competent, be deemed incompetent as a witness, or juror, on account of his religious belief; provided, he believes in the existence of God, and that under His dispensation such person will be held morally accountable for his acts, and be rewarded or punished therefor either in this world or in the world to come.

Article 37. That no religious test ought ever to be required as a qualification for any office of profit or trust in this State, other than a declaration of belief in the existence of God; nor shall the Legislature prescribe any other oath of office than the oath prescribed by this Constitution.

Article 38. That every gift, sale or devise of land to any Minister, Public Teacher, or Preacher of the Gospel, as such, or to any Religious Sect, Order or Denomination, or to, or for the support, use or benefit of, or in trust for, any Minister, Public Teacher, or Preacher of the Gospel, as such, or any Religious Sect, Order or Denomination; and every gift or sale of goods, or chattels to go in succession, or to take place after the death of the Seller or Donor, to or for such support, use or benefit; and also every devise of goods or chattels to or for the support, use or benefit of any Minister, Public Teacher, or Preacher of the Gospel, as such, or any Religious Sect, Order or Denomination, without the prior or subsequent sanction of the Legislature, shall be void; except always, any sale, gift, lease or devise of any quantity of land, not exceeding five acres, for a church, meeting-house, or other house of worship, or parsonage, or for a burying ground, which shall be improved,

enjoyed or used only for such purpose; or such sale, gift, lease or devise shall be void. Provided, however, that except in so far as the General Assembly shall hereafter by law otherwise enact, the consent of the Legislature shall not be required to any gift, grant, deed, or conveyance executed after the 2nd day of November, 1948, or to any devise or bequest contained in the will of any person dying after said 2nd day of November, 1948, for any of the purposes hereinabove in this Article mentioned.

## Article VIII

### Section 3. School Fund.

The School Fund of the State shall be kept inviolate and appropriated only to the purposes of education.

## MASSACHUSETTS

### Preamble

#### 1. Objects of Government; Body Politic, How Formed; Its Nature.

The end of the institution, maintenance, and administration of government is to secure the existence of the body politic, to protect it, and to furnish the individuals who compose it with the power of enjoying in safety and tranquillity their natural rights, and the blessings of life; and whenever these great objects are not obtained, the people have a right to alter the government, and to take measures necessary for their safety, prosperity and happiness.

The body politic is formed by a voluntary association of individuals: it is a social compact, by which the whole people covenants with

each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good. It is the duty of the people, therefore, in framing a constitution of government, to provide for an equitable mode of making laws, as well as for an impartial interpretation, and a faithful execution of them; that every man may, at all times, find his security in them.

We, therefore, the people of Massachusetts, acknowledging with grateful hearts, the goodness of the great Legislator of the universe, in affording us, in the course of His providence, an opportunity, deliberately and peaceably, without fraud, violence or surprise, of entering into an original, explicit, and solemn compact with each other; and of forming a new constitution of civil government, for ourselves and posterity; and devoutly imploring His direction in so interesting a design, do agree upon, ordain and establish the following DECLARATION OF RIGHTS, AND FRAME OF GOVERNMENT, AS THE CONSTITUTION OF THE COMMONWEALTH OF MASSACHUSETTS.

#### Part the First

#### A Declaration of the Rights of the Inhabitants

#### of the Commonwealth of Massachusetts

Right and duty of public religious worship. Protection therein.

II. It is the right as well as the Duty of all men in society, publickly, and at stated seasons to worship the SUPREME BEING, the great Creator and preserver of the Universe. And no Subject shall be hurt, molested, or restrained, in his person, Liberty, or Estate, for worshipping God in the manner and season most agreeable to the Dictates of his own conscience, or for his religious profession or sentiments; provided

he doth not Disturb the public peace, or obstruct others in their religious Worship.

Religious freedom established.

Article XI. "Instead of the Third Article of the Bill of Rights, the following Modification and Amendment thereof is substituted.

As the public worship of GOD and instructions in piety, religion and morality, promote the happiness and prosperity of a people and the security of a Republican Government;--Therefore, the several religious societies of this Commonwealth, whether corporate or unincorporate, at any meeting legally warned and holden for that purpose, shall ever have the right to elect their pastors or religious teachers, to contract with them for their support to raise money for erecting and repairing houses for public worship, for the maintenance of religious instruction and for the payment of necessary expenses: And all persons belonging to any religious society shall be taken and held to be members, until they shall file with the Clerk of such Society, a written notice, declaring the dissolution of their membership and thenceforth shall not be liable for any grant or contract, which may be thereafter made, or entered into by such society:--And all religious sects and denominations demeaning themselves peaceably and as good citizens of the Commonwealth, shall be equally under the protection of the law; and no subordination of any one sect or denomination to another shall ever be established by law."

No law to prohibit free exercise of religion.

Article XLVI. (In place of article XVIII of the articles of



amendment of the constitution ratified and adopted April 9, 1821, the following article for amendment, submitted by the constitutional convention, was ratified and adopted November 6, 1917.) Article XVII.

Section 1. No law shall be passed prohibiting the free exercise of religion.

Section 2. All moneys raised by taxation in the towns and cities for the support of public schools, and all moneys which may be appropriated by the commonwealth for the support of common schools shall be applied to, and expended in, no other schools than those which are conducted according to law, under the order and superintendence of the authorities of the town or city in which the money is expended; and no grant, appropriation or use of public money or property or loan of public credit shall be made or authorized by the commonwealth or any political division thereof for the purpose of founding, maintaining or aiding any school or institution of learning, whether under public control or otherwise, wherein any denominational doctrine is inculcated, or any other school, or any college, infirmary, hospital, institution, or educational, charitable or religious undertaking which is not publicly owned and under the exclusive control, order and superintendence of public officers or public agents authorized by the commonwealth or federal authority or both, except that appropriations may be made for the maintenance and support of the Soldiers' Home in Massachusetts and for free public libraries in any city or town, and to carry out legal obligations, if any, already entered into; and no such grant, appropriation or use of public money or property or loan of public credit shall be made or authorized for the purpose of founding, maintaining or aiding any church, religious denomination or society.

## Article XLVIII

Section 2. Excluded Matters.--No measure that relates to religion, religious practices or religious institutions; or to the appointment, qualification, tenure, removal, recall or compensation of judges; or to the reversal of a judicial decision; or to the powers, creation or abolition of courts; or the operation of which is restricted to a particular town, city or other political division or to particular districts or localities of the commonwealth; or that makes a specific appropriation of money from the treasury of the commonwealth, shall be proposed by an initiative petition; but if a law approved by the people is not repealed, the general court shall raise by taxation or otherwise and shall appropriate such money as may be necessary to carry such law into effect.

## MICHIGAN

## Preamble

We, the people of the state of Michigan, grateful to Almighty God for the blessings of freedom, and earnestly desiring to secure these blessings undiminished to ourselves and our posterity, do ordain and establish this constitution.

## Article I

## Declaration of Rights

Equal protection; discrimination.

Section 2. No person shall be denied the equal protection of the laws; nor shall any person be denied the enjoyment of his civil or political rights or be discriminated against in the exercise thereof because of religion, race, color or national origin. The legislature shall im-

plement this section by appropriate legislation.

Freedom of worship and religious belief; appropriations.

Section 4. Every person shall be at liberty to worship God according to the dictates of his own conscience. No person shall be compelled to attend, or, against his consent, to contribute to the erection or support of any place of religious worship, or to pay tithes, taxes or other rates for the support of any minister of the gospel or teacher of religion. No money shall be appropriated or drawn from the treasury for the benefit of any religious sect or society, theological or religious seminary; nor shall property belonging to the state be appropriated for any such purpose. The civil and political rights, privileges and capacities of no person shall be diminished or enlarged on account of his religious belief.

## Article VIII

### Education

Free public elementary and secondary schools; discrimination.

Section 2. The legislature shall maintain and support a system of free public elementary and secondary schools as defined by law. Every school district shall provide for the education of its pupils without discrimination as to religion, creed, race, color or national origin.

## Article IX

### Finance and Taxation

State, school aid fund, source and distribution.

Section 11. There shall be established a state school aid fund

which shall be used exclusively for aid to school districts, higher education and school employees' retirement systems, as provided by law.

One-half of all taxes imposed on retailers on taxable sales at retail of tangible personal property, and other tax revenues provided by law, shall be dedicated to this fund. Payments from this fund shall be made in full on a scheduled basis, as provided by law.

## MINNESOTA

### Preamble

We, the people of the State of Minnesota, grateful to God for our civil and religious liberty, and desiring to perpetuate its blessings and secure the same to ourselves and our posterity, do ordain and establish this Constitution:

## Article I

### Bill of Rights

Freedom of conscience; no preference to be given to any religious establishment or mode of worship.

Section 16. The enumeration of rights in this constitution shall not be construed to deny or impair others retained by and inherent in the people. The right of every man to worship God according to the dictates of his own conscience shall never be infringed, nor shall any man be compelled to attend, erect or support any place of worship, or to maintain any religious or ecclesiastical ministry, against his consent; nor shall any control of or interference with the rights of conscience be permitted or any preference be given by law to any religious establishment or mode of worship; but the liberty of conscience hereby

secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of the State, nor shall any money be drawn from the treasury for the benefit of any religious societies or religious or theological seminaries.

No religious test or property qualifications to be required.

Section 17. No religious test or amount of property shall ever be required as a qualification for any office of public trust under the State. No religious test or amount of property shall ever be required as a qualification of any voter at any election in this State; nor shall any person be rendered incompetent to give evidence in any court of law or equity in consequence of his opinion upon the subject of religion.

## Article VIII

### School Funds, Education and Sciences

Public schools in each township to be established.

Section 3. The legislature shall make such provisions, by taxation or otherwise, as, with the income arising from the school fund, will secure a thorough and efficient system of public schools in each township in the State.

Prohibition as to aiding sectarian school.

But in no case shall the moneys derived as aforesaid, or any portion thereof, or any public moneys or property, be appropriated or used for the support of schools wherein the distinctive doctrines, creeds or tenets of any particular Christian or other religious sect are promulgated or taught.

## MISSISSIPPI

## Preamble

We, the people of Mississippi in convention assembled, grateful to Almighty God, and invoking his blessing on our work, do ordain and establish this constitution.

## Article III

Section 18. No religious test as a qualification for office shall be required; and no preference shall be given by law to any religious sect or mode of worship; but the free enjoyment of all religious sentiments and the different modes of worship shall be held sacred. The rights hereby secured shall not be construed to justify acts of licentiousness injurious to morals or dangerous to the peace and safety of the state, or to exclude the Holy Bible from use in any public school of this state.

## Article VIII

Section 208. No religious or other sect or sects shall ever control any part of the school or other educational funds of this state; nor shall any funds be appropriated toward the support of any sectarian school, or to any school that at the time of receiving such appropriation is not conducted as a free school.

## MISSOURI

## Preamble

We, the people of Missouri, with profound reverence for the Supreme Ruler of the Universe, and grateful for His goodness, do establish this Constitution for the better government of the State.

Article I  
Bill of Rights

Section 5. Religious freedom--liberty of conscience and belief--limitations.--That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; that no human authority can control or interfere with the rights of conscience; that no person shall, on account of his religious persuasion or belief, be rendered ineligible to any public office or trust or profit in this state, be disqualified from testifying or serving as a juror, or be molested in his person or estate; but this section shall not be construed to excuse acts of licentiousness, nor to justify practices inconsistent with the good order, peace or safety of the state, or with the rights of others.

Section 6. Practice and support of religion not compulsory--contracts therefor enforcible.--That no person can be compelled to erect, support or attend any place or system of worship, or to maintain or support any priest, minister, preacher or teacher of any sect, church, creed or denomination of religion; but if any person shall voluntarily make a contract for any such object, he shall be held to the performance of the same.

Section 7. Public aid for religious purposes--preferences and discriminations on religious grounds.--That no money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, sect or denomination of religion, or in aid of any priest, preacher, minister or teacher thereof, as such; and that no preference shall be given to nor any discrimination made against any church, sect or creed of religion, or any form of religious faith or worship.

## Article IX

## Education

Section 8. Prohibition of public aid for religious purposes and institutions.--Neither the general assembly, nor any county, city, town, township, school district or other municipal corporation, shall ever make an appropriation or pay from any public fund whatever, anything in aid of any religious creed, church or sectarian purpose or to help to support or sustain any private or public school, academy, seminary, college, university, or other institution of learning controlled by any religious creed, church or sectarian denomination whatever; nor shall any grant of donation of personal property or real estate ever be made by the state, or any county, city, town, or other municipal corporation, for any religious creed, church, or sectarian purpose whatever.

## MONTANA

## Preamble

We, the people of Montana, grateful to Almighty God for the blessings of liberty, in order to secure the advantages of a state government, do, in accordance with the provisions of the enabling act of congress, approved the 22nd of February, A.D. 1889, ordain and establish this constitution.

## Article III

A Declaration of Rights of the People of the  
State of Montana

Section 4. The free exercise and enjoyment of religious profession and worship, without discrimination, shall forever hereafter be guaranteed,



and no person shall be denied any civil or political right or privilege on account of his opinions concerning religion, but the liberty of conscience hereby secured shall not be construed to dispense with oaths or affirmations, excuse acts of licentiousness, by bigamous or polygamous marriage, or otherwise, or justify practices inconsistent with the good order, peace, or safety of the state, or opposed to the civil authority thereof, or of the United States. No person shall be required to attend any place of worship or support any ministry, religious sect, or denomination, against his consent; nor shall any preference be given by law to any religious denomination or mode of worship.

#### Article V

Section 35. No appropriation shall be made for charitable, industrial, educational or benevolent purposes to any person, corporation or community not under the absolute control of the state, nor to any denominational or sectarian institution or association.

#### Article XI

##### Education

Section 8. Neither the legislative assembly, nor any county, city, town, or school district, or other public corporations, shall ever make directly, or indirectly, any appropriation, or pay from any public fund or moneys whatever, or make any grant of lands or other property in aid of any church, or for any sectarian purpose, or to aid in the support of any school, academy, seminary, college, university, or other literary, scientific institution, controlled in whole or in part by any church, sect or denomination whatever.

Section 9. No religious or partisan test or qualification shall ever be required of any person as a condition of admission into any public educational institution of the state, either as teacher or student; nor shall attendance be required at any religious service whatever, nor shall any sectarian tenets be taught in any public educational institution of the state; nor shall any person be debarred admission to any of the collegiate departments for the university on account of sex.

## NEBRASKA

### Preamble

We, the people, grateful to Almighty God for our freedom, do ordain and establish the following declaration of rights and frame of government, as the Constitution of the State of Nebraska.

## Article I

### Bill of Rights

Section 4. All persons have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences. No person shall be compelled to attend, erect or support any place of worship against his consent, and no preference shall be given by law to any religious society, nor shall any interference with the rights of conscience be permitted. No religious test shall be required as a qualification for office, nor shall any person be incompetent to be a witness on account of his religious beliefs; but nothing herein shall be construed to dispense with oaths and affirmations. Religion, morality, and knowledge, however, being essential to good government, it shall be the duty of the Legislature to pass suitable laws to protect every religious

denomination in the peaceable enjoyment of its own mode of public worship, and to encourage schools and the means of instruction.

## Article VII

### Education

Section 11. No sectarian instruction shall be allowed in any school or institution supported in whole or in part by the public funds set apart for educational purposes, nor shall the state accept any grant, conveyance, or bequest of money, lands or other property to be used for sectarian purposes. Neither the State Legislature nor any county, city or other public corporation, shall ever make any appropriation from any public fund, or grant any public land in aid of any sectarian or denominational school or college, or any educational institution which is not exclusively owned and controlled by the state or a governmental subdivision thereof. No religious test or qualification shall be required of teacher or student, for admission to or continuance in any public school or educational institution supported in whole or in part by public taxation.

## NEVADA

### Preamble

We, the people of the State of Nevada, Grateful to Almighty God for our freedom in order to secure its blessings, insure domestic tranquillity, and form a more perfect Government, do establish this CONSTITUTION.

## Article I

## Declaration of Rights

Section 4. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this state; and no person shall be rendered incompetent to be a witness on account of his opinions on matters of his religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this state.

## Article XI

### Education

Section 2. The legislature shall provide for a uniform system of common schools, by which a school shall be established and maintained in each school district at least six months in every year, and any school district which shall allow instruction of a sectarian character therein may be deprived of its proportion of the interest of the public school fund during such neglect or infraction, and the legislature may pass such laws as will tend to secure a general attendance of the children in each school district upon said public schools.

Section 9. No sectarian instruction shall be imparted or tolerated in any school or university that may be established under this constitution.

Section 10. No public funds of any kind or character whatever, state, county, or municipal, shall be used for sectarian purposes.

NEW HAMPSHIRE  
Bill of Rights

5th. Every individual has a natural and unalienable right to worship God according to the dictates of his own conscience, and reason; and no subject shall be hurt, molested or restrained, in his person, liberty, or estate, for worshipping God in the manner and season most agreeable to the dictates of his own conscience, or for his religious profession, sentiments, or persuasion; provided he doth not disturb the public peace or disturb others in their religious worship.

6th. As morality and piety, rightly grounded on evangelical principles, will give the best and greatest security to government, and will lay, in the hearts of men, the strongest obligations to due subjection; and as the knowledge of these is most likely to be propagated through a society, by the institution of the public worship of the Deity, and of public instruction in morality and religion; therefore, to promote these important purposes, the people of this state have a right to empower, and do hereby fully empower, the legislature, to authorize, from time to time, the several towns, parishes, bodies corporate, or religious societies, within this state, to make adequate provision, at their own expense, for the support and maintenance of public Protestant teachers of piety, religion and morality:

Provided notwithstanding, that the several towns, parishes, bodies corporate, or religious societies, shall, at all times have the exclusive right of electing their own public teachers, and of contracting with them for their support and maintenance. And no person, or any one particular religious sect or denomination, shall ever be compelled to pay towards the

support of the teacher or teachers of another persuasion, sect or denomination.

And every denomination of Christians, demeaning themselves quietly, and as good subjects of the state, shall be equally under the protection of the law: And no subordination of any one sect or denomination to another, shall ever be established by law.

And nothing herein shall be understood to affect any former contracts made for the support of the ministry; but all such contracts shall remain, and be in the same state as if this constitution had not been made.

#### Article 83

Provided, nevertheless, that no money raised by taxation shall ever be granted or applied for the use of the schools or institutions of any religious sect or denomination.

#### NEW JERSEY

##### Preamble

We, the people of the State of New Jersey, grateful to Almighty God for the civil and religious liberty which He hath so long permitted us to enjoy, and looking to Him for a blessing upon our endeavors to secure and transmit the same unimpaired to succeeding generations, do ordain and establish this Constitution.

#### Article I

##### Rights and Privileges

3. No person shall be deprived of the inestimable privilege of worshipping Almighty God in a manner agreeable to the dictates of his own conscience; nor under any pretense whatever be compelled to attend any place of worship contrary to his faith and judgment; nor shall any person be obliged to pay tithes, taxes, or other rates for building or repairing any church or churches, place or places of worship, or for the maintenance of any minister or ministry, contrary to what he believes to be right or has deliberately and voluntarily engaged to perform.

4. There shall be no establishment of one religious sect in preference to another; no religious or racial test shall be required as a qualification for any office or public trust.

5. No person shall be denied the enjoyment of any civil or military right, nor be discriminated against in the exercise of any civil or military right, nor be segregated in the militia or in the public schools, because of religious principles, race, color, ancestry or national origin.

## NEW MEXICO

### Preamble

We, the people of New Mexico, grateful to Almighty God for the blessings of liberty, in order to secure the advantages of a state government, do ordain and establish this constitution.

## Article II

### Bill of Rights

Section 11. Every man shall be free to worship God according to

the dictates of his own conscience, and no person shall ever be molested or denied any civil or political right or privilege on account of his religious opinion or mode of religious worship. No person shall be required to attend any place of worship or support any religious sect or denomination; nor shall any preference be given by law to any religious denomination or mode of worship.

#### Article IV

Section 31. No appropriation shall be made for charitable, educational or other benevolent purposes to any person, corporation, association, institution or community, not under the absolute control of the state.

#### Article XII

##### Education

Section 3. The schools, colleges, universities and other educational institutions provided for by this Constitution shall forever remain under the exclusive control of the State, and no part of the proceeds arising from the sale or disposal of any lands granted to the State by Congress, or any other funds appropriated, levied or collected for educational purposes, shall be used for the support of any sectarian, denominational or private school, college or university.

Section 9. No religious test shall ever be required as a condition of admission into the public schools or any educational institution of this State, either as a teacher or student and no teacher or students of such school or institution shall ever be required to attend or participate in any religious service whatsoever.



## Article XXI

## Compact With the United States

Section 1. Religious toleration--Polygamy.--Perfect toleration of religious sentiment shall be secured, and no inhabitant of this state shall ever be molested in person or property on account of his or her mode of religious worship. Polygamous or plural marriages and polygamous cohabitation are forever prohibited.

Section 4. Provision shall be made for the establishment and maintenance of a system of public schools which shall be open to all the children of the State and free from sectarian control, and said schools shall always be conducted in English.

NEW YORK

Preamble

We the People of the State of New York, grateful to Almighty God for our Freedom, in order to secure its blessings, DO ESTABLISH THIS CONSTITUTION.

## Article I

## Bill of Rights

(Freedom of worship; religious liberty.) Section 3. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this state to all mankind; and no person shall be rendered incompetent to be a witness on account of his opinions on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts

of licentiousness, or justify practices inconsistent with the peace or safety of this state.

## Article VII

### State Finances

(Gift or loan of state credit or money prohibited; exceptions for enumerated purposes.) Section 8. The money of the state shall not be given or loaned to or in aid of any private corporation or association, or private undertaking; nor shall the credit of the state be given or loaned to or in aid of any individual, or public or private corporation or association, or private undertaking, but the foregoing provisions shall not apply to any fund or property now held or which may hereafter be held by the state for educational purposes.

## Article XI

### Education

(Use of public property or money in aid of denominational schools prohibited; transportation of children authorized.) Section 3. Neither the state nor any subdivision thereof shall use its property or credit or any public money, or authorize or permit either to be used, directly or indirectly, in aid or maintenance, other than for examination or inspection, of any school or institution of learning wholly or in part under the control or direction of any religious denomination, or in which any denominational tenet or doctrine is taught, but the legislature may provide for the transportation of children to and from any school or institution of learning.

## NORTH CAROLINA

## Preamble

We, the people of the State of North Carolina, grateful to Almighty God, the Sovereign Ruler of Nations, for the preservation of the American Union and the existence of our civil, political and religious liberties, and acknowledging our dependence upon Him for the continuance of those blessings to us and our posterity, do, for the more certain security thereof, and for the better government of this State, ordain and establish this Constitution:

## Article I

## Declaration of Rights

Section 26. Religious liberty. All persons have a natural and inalienable right to worship Almighty God according to the dictates of their own consciences, and no human authority should, in any case whatever, control or interfere with the rights of conscience.

## Article IX

## Education

Section 4. What property devoted to educational purposes. The proceeds of all lands that have been or hereafter may be granted by the United States to this State, and not otherwise appropriated by this State or the United States; also all moneys, stocks, bonds, and other property now belonging to any State fund for purposes of education; also the net proceeds of all sales of the swamp lands belonging to the State, and all other grants, gifts or devises that have been or hereafter may be made to

the State, and not otherwise appropriated by the State, or by the terms of the grant, gift or devise, shall be paid into the State Treasury, and, together with so much of the ordinary revenue of the State as may be by law set apart for that purpose, shall be faithfully appropriated for establishing and maintaining in this State a system of free public schools, and for no other uses or purposes whatsoever.

## NORTH DAKOTA

### Preamble

We, the people of North Dakota, grateful to Almighty God for the blessings of civil and religious liberty, do ordain and establish this constitution.

### Article I

#### Declaration of Rights

Section 4. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall be forever guaranteed in this state, and no person shall be rendered incompetent to be a witness or juror on account of his opinion on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this state.

### Article VIII

#### Education

Section 147. A high degree of intelligence, patriotism, integrity and morality on the part of every voter in a government by the people

being necessary in order to insure the continuance of that government and the prosperity and happiness of the people, the legislative assembly shall make provision for the establishment and maintenance of a system of public schools which shall be open to all children of the state of North Dakota and free from sectarian control. This legislative requirement shall be irrevocable without the consent of the United States and the people of North Dakota.

Section 152. All colleges, universities, and other educational institutions, for the support of which lands have been granted to this state, or which are supported by a public tax, shall remain under the absolute and exclusive control of the state. No money raised for the support of the public school of the state shall be appropriated to or used for support of any sectarian school.

## Article XVI

### Compact with the United States

The following article shall be irrevocable without the consent of the United States and the people of this state:

Section 203. First. Perfect toleration of religious sentiment shall be secured, and no inhabitant of this state shall ever be molested in person or property on account of his or her mode of religious worship.

## OHIO

### Article I

#### Bill of Rights

7. Rights of conscience; the necessity of religion and knowledge.

All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience. No person shall be compelled to attend, erect, or support any place of worship, or maintain any form of worship, against his consent; and no preference shall be given, by law, to any religious society; nor shall any interference with the rights of conscience be permitted. No religious test shall be required, as a qualification for office, nor shall any person be incompetent to be a witness on account of his religious belief; but nothing herein shall be construed to dispense with oaths and affirmations. Religion, morality, and knowledge, however, being essential to good government, it shall be the duty of the General Assembly to pass suitable laws, to protect every religious denomination in the peaceable enjoyment of its own mode of public worship, and to encourage schools and the means of instruction.

## Article VI

### Education

#### 2. Common school fund to be raised; how controlled.

The General Assembly shall make such provisions, by taxation, or otherwise, as, with the income arising from the school trust fund, will secure a thorough and efficient system of common schools throughout the State; but, no religious or other sect, or sects, shall ever have any exclusive right to, or control of, any part of the school funds of this State.

OKLAHOMA

Preamble

Invoking the guidance of Almighty God, in order to secure and perpetuate the blessing of liberty; to secure just and rightful government; to promote our mutual welfare and happiness, we, the people of the State of Oklahoma, do ordain and establish this Constitution.

## Article I

### Federal Relations

#### 2. Religious liberty--Polygamous or plural marriages.

Perfect toleration of religious sentiment shall be secured, and no inhabitant of the State shall ever be molested in person or property on account of his or her mode of religious worship; and no religious test shall be required for the exercise of civil or political rights. Polygamous or plural marriages are forever prohibited.

#### 5. Public Schools--Separate schools.

Provisions shall be made for the establishment and maintenance of a system of public schools, which shall be open to all the children of the State and free from sectarian control; and said schools shall always be conducted in English: Provided, that nothing herein shall preclude the teaching of other languages in said public schools: And Provided, further, that this shall not be construed to prevent the establishment and maintenance of separate schools for white and colored children.

## Article II

### Bill of Rights

#### 5. Public money or property--Use for sectarian purposes.

No public money or property shall ever be appropriated, applied,

donated, or used, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, or system of religion, or for the use, benefit or support of any priest, preacher, minister, or other religious teacher or dignitary, or sectarian institution as such.

## OREGON

### Article I

#### Bill of Rights

Section 2. Freedom of worship. All men shall be secure in the Natural right, to worship Almighty God according to the dictates of their own consciences.

Section 3. Freedom of religious opinion. No law shall in any case whatever control the free exercise, and enjoyment of religious (sic) opinions, or interfere with the rights of conscience.

Section 4. No religious qualification for office. No religious test shall be required as a qualification for any office of trust or profit.

Section 5. No money to be appropriated for religion. No money shall be drawn from the Treasury for the benefit of any religious (sic), or theological institution, nor shall any money be appropriated for the payment of any religious (sic) services in either house of the Legislative Assembly.

Section 6. No religious test for witnesses or jurors. No person shall be rendered incompetent as a witness, or juror in consequence of his opinions on matters of religion (sic); nor be questioned in any



Court of Justice touching his religious (sic) belief to affect the weight of his testimony.

## PENNSYLVANIA

### Preamble

We, the people of the Commonwealth of Pennsylvania, grateful to Almighty God for the blessings of civil and religious liberty, and humbly invoking His guidance, do ordain and establish this Constitution.

## Article I

### Declaration of Rights

#### Religious Freedom

Section 3. All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; no man can of right be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent; no human authority can, in any case whatever, control or interfere with the rights of conscience, and no preference shall ever be given by law to any religious establishments or modes of worship.

#### Religion

Section 4. No person who acknowledges the being of a God and a future state of rewards and punishments shall, on account of his religious sentiments, be disqualified to hold any office or place of trust or profit under this Commonwealth.

## Article III

### Legislation

Section 15. Public school money not available to sectarian schools.

No money raised for the support of the public schools of the Commonwealth shall be appropriated to or used for the support of any sectarian school.

Appropriations for Public Assistance, Military Service Scholarships

Section 29. No appropriation shall be made for charitable, educational or benevolent purposes to any person or community nor to any denominational and sectarian institution, corporation or association: Provided, That appropriations may be made for pensions or gratuities for military service and to blind persons twenty-one years of age and upwards and for assistance to mothers having dependent children and to aged persons without adequate means of support and in the form of scholarship grants or loans for higher educational purposes to residents of the Commonwealth enrolled in institutions of higher learning except that no scholarship, grants or loans for higher educational purposes shall be given to persons enrolled in a theological seminary or school of theology.

Section 30. Charitable and Educational Appropriations. No appropriation shall be made to any charitable or educational institution not under the absolute control of the Commonwealth, other than normal schools of the State, established by law for the professional training of teachers, except by a vote of two-thirds of all the members elected to each House.

RHODE ISLAND

We, the people of the State of Rhode Island and Providence

Plantations, grateful to Almighty God for the civil and religious liberty which He hath so long permitted us to enjoy, and looking to Him for a blessing upon our endeavors to secure and to transmit the same unimpaired to succeeding generations, do ordain and establish this constitution of government.

## Article I

### Declaration of Certain Constitutional Rights

#### And Principles

In order effectually to secure the religious and political freedom established by our venerated ancestors, and to preserve the same for our posterity, we do declare that the essential and unquestionable rights and principles hereinafter mentioned shall be established, maintained, and preserved, and shall be of paramount obligation in all legislative, judicial, and executive proceedings.

Section 3. Whereas Almighty God hath created the mind free; and all attempts to influence it by temporal punishments or burdens, or by civil incapacitations, tend to beget habits of hypocrisy and meanness; and whereas a principal object of our venerable ancestors, in their migration to this country and their settlement of this state, was, as they expressed it, to hold forth a lively experiment, that a flourishing civil state may stand and be best maintained with full liberty in religious concerns: We, therefore, declare that no man shall be compelled to frequent or to support any religious worship, place, or ministry whatever, except in fulfillment of his own voluntary contract; nor enforced, restrained, molested, or burdened in his body or goods; nor disqualified from holding any office; nor otherwise suffer on account of his

religious belief; and that every man shall be free to worship God according to the dictates of his own conscience, and to profess and by argument to maintain his opinion in matters of religion; and that the same shall in no wise diminish, enlarge, or affect his civil capacity.

## Article XII

### Of Education

Section 2. The money which now is or which may hereafter be appropriated by law for the establishment of a permanent fund for the support of public schools, shall be securely invested, and remain a perpetual fund for that purpose.

Section 4. The general assembly shall make all necessary provisions by law for carrying this article into effect. They shall not divert said money or fund from the aforesaid uses, nor borrow, appropriate, or use the same, or any part thereof, for any other purpose, under any pretence whatsoever.

## SOUTH CAROLINA

### Constitution of the State of South Carolina

We, the people of the State of South Carolina, in Convention assembled, grateful to God for our liberties, do ordain and establish this Constitution for the preservation and perpetuation of the same.

## Article I

### Declaration of Rights

Section 4. Religious worship--freedom of speech--petition.--

The General Assembly shall make no law respecting an establishment of religion or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble and to petition the Government or any department thereof for a redress of grievances.

## Article XI

### Education

Section 9. Property or credit of State shall not benefit sectarian institutions.--The property or credit of the State of South Carolina, or any county, city, town, township, school district, or other subdivision of the said State, or any public money, from whatever source derived, shall not, by gift, donation, loan, contract, appropriation, or otherwise, be used, directly or indirectly, in aid or maintenance of any college, school, hospital, orphan house, or other institution, society or organization, of whatever kind, which is wholly or in part under the direction or control of any church or of any religious or sectarian denomination, society or organization.

## Article XVII

### Miscellaneous Matters

Section 4. Supreme Being.--No person who denies the existence of a Supreme Being shall hold any office under this Constitution.

## SOUTH DAKOTA

### Preamble

We, the people of South Dakota, grateful to Almighty God for our

civil and religious liberties, in order to form a more perfect and independent government, establish justice, insure tranquillity, provide for the common defense, promote the general welfare and preserve to ourselves and to our posterity the blessings of liberty, do ordain and establish this constitution for the state of South Dakota.

## Article VI

### Bill of Rights

Section 3. The right to worship God according to the dictates of conscience shall never be infringed. No person shall be denied any civil or political right, privilege or position on account of his religious opinions; but the liberty of conscience hereby secured shall not be so construed as to excuse licentiousness, the invasion of the rights of others, or justify practices inconsistent with the peace or safety of the state.

No person shall be compelled to attend or support any ministry or place of worship against his consent nor shall any preference be given by law to any religious establishment or mode of worship. No money or property of the state shall be given or appropriated for the benefit of any sectarian or religious society or institution.

## Article VIII

### Education and School Lands

Section 16. No appropriation of lands, money or other property or credits to aid any sectarian school shall ever be made by the state, or any county or municipality within the state, nor shall the state or any county or municipality within the state accept any grant, conveyance,

gift or bequest of lands, money or other property to be used for sectarian purposes, and no sectarian instruction shall be allowed in any school or institution aided or supported by the state.

## Article XXII

### Compact With the United States

Fourth. That provision shall be made for the establishment and maintenance of systems of public schools, which shall be open to all the children of this state, and free from sectarian control.

## TENNESSEE

### Preamble

We, the Delegates and Representatives of the people of the State of Tennessee, duly elected, and in Convention assembled, in pursuance of said Act of Assembly, have ordained and established the following Constitution and form of government for this State, which we recommend to the people of Tennessee for their ratification: That is to say--

### Declaration of Rights

Section 3. Freedom of Worship.--That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience; that no man can of right be compelled to attend, erect, or support any place of worship, or to maintain any minister against his consent; that no human authority can, in any case whatever, control or interfere with the rights of conscience; and that no preference shall ever be given, by law to any religious establishment or mode of worship.

Section 4. No religious or political test.--That no political or religious test, other than an oath to support the Constitution of the United States and of his State, shall ever be required as a qualification to any office or public trust under this state.

#### Article IX

##### Disqualifications

Section 2. No atheist shall hold a civil office.--No person who denies the being of God, or a future state of rewards and punishments, shall hold any office in the civil department of this State.

#### Article XI

##### Miscellaneous Provisions

Section 12. Education to be cherished--Common school fund--Poll tax--Whites and negroes.--Knowledge, learning, and virtue, being essential to the preservation of republican institutions, and the diffusion of the opportunities and advantages of education throughout the different portions of the State, being highly conducive to the promotion of this end, it shall be the duty of the General Assembly in all future periods of this Government, to cherish literature and science. And the fund called common school fund, and all the lands and proceeds thereof, dividends, stocks, and other property of every description whatever, heretofore by law appropriated by the General Assembly of this State for the use of common schools, and all such as shall hereafter be appropriated, shall remain a perpetual fund, the principal of which shall never be diminished by Legislative appropriations; and the interest thereof shall be inviolably appropriated to the support and encouragement of common schools



throughout the State, and for the equal benefit of all the people thereof; and no law shall be made authorizing said fund or any part thereof to be divested to any other use than the support and encouragement of common schools....

Section 15. Religious holidays.--No person shall in time of peace be required to perform any service to the public on any day set apart by his religion as a day of rest.

## TEXAS

### Preamble

Humbly invoking the blessings of Almighty God, the people of the State of Texas do ordain and establish this Constitution.

## Article I

### Bill of Rights

That the general, great and essential principles of liberty and free government may be recognized and established, we declare:

Section 4. There Shall Be No Religious Test for Office.--No religious test shall ever be required as a qualification to any office or public trust in this State; nor shall anyone be excluded from holding office on account of his religious sentiments, provided he acknowledge the existence of a Supreme Being.

Section 5. How Oaths Shall Be Administered.--No person shall be disqualified to give evidence in any of the courts of this State on account of his religious opinions, or for want of any religious belief, but all oaths or affirmations shall be administered in the mode most

binding upon the conscience, and shall be taken subject to the pains and penalties of perjury.

Section 6. Freedom in Religious Worship Guaranteed.--All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences. No man shall be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent. No human authority ought, in any case whatever, to control or interfere with the rights of conscience in matters of religion, and no preference shall ever be given by law to any religious society or mode of worship. But it shall be the duty of the Legislature to pass such laws as may be necessary to protect equally every religious denomination in the peaceable enjoyment of its own mode of public worship.

Section 7. No Appropriation for Sectarian Purposes.--No money shall be appropriated or drawn from the Treasury for the benefit of any sect, or religious society, theological or religious seminary, nor shall property belonging to the State be appropriated for any such purposes.

## Article VII

### Education

#### The Public Free Schools

Section 5. The principal of all bonds and other funds, and the principal arising from the sale of the lands hereinbefore set apart to said school fund, shall be the permanent school fund, and all the interest derivable therefrom and the taxes herein authorized and levied shall be the available school fund. The available school fund shall be applied annually to the support of the public free schools. And no law shall ever

be enacted appropriating any part of the permanent or available school fund to any other purpose whatever; nor shall the same, or any part thereof ever be appropriated to or used for the support of any sectarian school; and the available school fund herein provided shall be distributed to the several counties according to their scholastic population and applied in such manner as may be provided by law.

Section 3 of Article VIII. Taxes to Be Collected for Public Purposes Only.--Taxes shall be levied and collected by general laws and for public purposes only.

## UTAH

### Preamble

Grateful to Almighty God for life and liberty, we, the people of Utah, in order to secure and perpetuate the Principles of free government, do ordain and establish this CONSTITUTION.

## Article I

### Declaration of Rights

#### Section 1. (Inherent and inalienable rights.)

All men have the inherent and inalienable right to enjoy and defend their lives and liberties; to acquire, possess and protect property; to worship according to the dictates of their consciences; to assemble peaceably, protest against wrongs, and petition for redress of grievances; to communicate freely their thoughts and opinions, being responsible for the abuse of that right.

#### Section 4. (Religious liberty.)

The rights of conscience shall never be infringed. The State shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; no religious test shall be required as a qualification for any office of public trust or for any vote at any election; nor shall any person be incompetent as a witness or juror on account of religious belief or the absence thereof. There shall be no union of Church and State, nor shall any church dominate the State or interfere with its functions. No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or for the support of any ecclesiastical establishment. No property qualification shall be required of any person to vote, or hold office, except as provided in this Constitution.

### Article III

#### Ordinance

(Religious toleration. Polygamy forbidden.)

First:--Perfect toleration of religious sentiment is guaranteed. No inhabitant of this State shall ever be molested in person or property on account of his or her mode of religious worship; but polygamous or plural marriages are forever prohibited.

(Free, nonsectarian schools.)

Fourth:--The Legislature shall make laws for the establishment and maintenance of a system of public schools, which shall be open to all the children of the State and be free from sectarian control.

### Article X

#### Education

Section 1. (Free nonsectarian schools.)

The legislature shall provide for the establishment and maintenance of a uniform system of public schools, which shall be open to all children of the State, and be free from sectarian control.

Section 12. (No religious or partisan tests in schools.)

Neither religious nor partisan test or qualification shall be required of any person as a condition of admission, as teacher or student, into any public institution of the State.

Section 13. (Public aid to church schools forbidden.)

Neither the Legislature nor any county, city, town, school district or other public corporation, shall make any appropriation to aid in the support of any school, seminary, academy, college, university or other institution, controlled in whole, or in part, by any church, sect or denomination whatever.

VERMONT

Chapter I

A Declaration of the Rights of the Inhabitants

Of the State of Vermont

Religious freedom and worship

Article 3rd. That all men have a natural and unalienable right, to worship Almighty God, according to the dictates of their own consciences and understandings, as in their opinion shall be regulated by the word of God: and that no man ought to, or of right can be compelled

to attend any religious worship, or erect or support any place of worship, or maintain any minister, contrary to the dictates of his conscience, nor can any man be justly deprived or abridged of any civil right as a citizen, on account of his religious sentiments, or peculia(r) mode of religious worship; and that no authority can, or ought to be vested in, or assumed by, any power whatever, that shall in any case interfere with, or in any manner control the rights of conscience, in the free exercise of religious worship. Nevertheless, every sect or denomination of Christians ought to observe the sabbath or Lord's day, and keep up some sort of religious worship, which to them shall seem most agreeable to the revealed will of God.

## Chapter II

(Section 64. Laws to encourage virtue and prevent vice; schools; religious societies)

Section 64. Laws for the encouragement of virtue and prevention of vice and immorality ought to be constantly kept in force, and duly executed; and a competent number of schools ought to be maintained in each town unless the general assembly permits other provisions for the convenient instruction of youths. All religious societies, or bodies of men that may be united or incorporated for the advancement of religion and learning, or for other pious and charitable purposes, shall be encouraged and protected in the enjoyment of the privileges, immunities, and estates, which they in justice ought to enjoy, under such regulations as the general assembly of this state shall direct.

## Bill of Rights

A DECLARATION of rights by the good people of Virginia in the exercise of their sovereign powers, which rights do pertain to them and their posterity, as the basis and foundation of government.

### Article I

Section 16. Religious freedom.--That religion or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and, therefore, all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practice Christian forbearance, love and charity towards each other.

### Article IV

#### Legislative Department

Section 58. Prohibitions on General Assembly as to suspension of writ of habeas corpus, and enactment of laws referring to religion and other laws.--...No man shall be compelled to frequent or support any religious worship, place, or ministry, whatsoever, nor shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief; but all men shall be free to profess and by argument to maintain their opinions in matters of religion, and the same shall in no wise diminish, enlarge, or affect, their civil capacities. And the General Assembly shall not prescribe any religious test whatever, or confer any peculiar privileges or advantages on any sect or denomination, or pass any law requiring or

authorizing any religious society, or the people of any district within this State; to levy on themselves, or others, any tax for the erection or repair of any house of public worship, or for the support of any church or ministry; but it shall be left free to every person to select his religious instructor, and to make for his support such private contract as he shall please.

## Article IX

### Education and Public Instruction

Section 141. State appropriations prohibited to schools or institutions of learning not owned or exclusively controlled by the State or some subdivision thereof; exceptions to rule.

No appropriation of public funds shall be made to any school or institution of learning not owned or exclusively controlled by the State or some political subdivision thereof; provided, first, that the General Assembly may, and the governing bodies of the several counties, cities and towns may, subject to such limitations as may be imposed by the General Assembly, appropriate funds for educational purposes which may be expended in furtherance of elementary, secondary, collegiate or graduate education of Virginia students in public and nonsectarian private schools and institutions of learning, in addition to those owned or exclusively controlled by the State or any such county, city, or town; second, that the General Assembly may appropriate funds to an agency, or to a school or institution of learning owned or controlled by an agency, created and established by two or more States under a joint agreement to which this State is a party for the purpose of providing educational facilities for the several States joining in such agreement; third, that counties,



cities, towns and districts may make appropriations to nonsectarian schools of manual, industrial or technical training and also to any school or institution owned or exclusively controlled by such county, city, town or school district.

## WASHINGTON

### Preamble

We, the people of the State of Washington, grateful to the Supreme Ruler of the Universe for our liberties, do ordain this constitution.

### Declaration of Rights

#### Article I

Section 11. Religious Freedom. Absolute freedom of conscience in all matters of religious sentiment, belief and worship, shall be guaranteed to every individual, and no one shall be molested or disturbed in person or property on account of religion; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace and safety of the state. No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or the support of any religious establishment: Provided, however, That this article shall not be so construed as to forbid the employment by the state of a chaplain for such of the state custodial, correctional and mental institutions as in the discretion of the legislature may seem justified. No religious qualification shall be required for any public office or employment, nor shall any person be incompetent as a witness or juror, in consequence of his opinion on matters of religion, nor be questioned in

any court of justice touching his religious belief to affect the weight of his testimony.

## Article IX

### Education

Section 2. Public School System. The legislature shall provide for a general and uniform system of public schools. The public school system shall include common schools, and such high schools, normal schools, and technical schools as may hereafter be established. But the entire revenue derived from the common school fund and the state tax for common schools shall be exclusively applied to the support of the common schools.

Section 4. Sectarian Control or Influence Prohibited. All schools maintained or supported wholly or in part by the public funds shall be forever free from sectarian control or influence.

## Article XXVI

### Compact With the United States

The following ordinance shall be irrevocable without the consent of the United States and the people of this state:

First. That perfect toleration of religious sentiment shall be secured and that no inhabitant of this state shall ever be molested in person or property on account of his or her mode of religious worship.

## WEST VIRGINIA

### Preamble

Since through Divine Providence we enjoy the blessings of civil,

political and religious liberty, we, the people of West Virginia, in and through the provisions of this Constitution, reaffirm our faith in and constant reliance upon God and seek diligently to promote, preserve and perpetuate good government in the State of West Virginia for the common welfare, freedom and security of ourselves and our posterity.

### Article III

#### Bill of Rights

##### Religious Freedom Guaranteed

15. No man shall be compelled to frequent or support any religious worship, place or ministry whatsoever; nor shall any man be enforced, restrained, molested or burthened, in his body or goods, or otherwise suffer, on account of his religious opinions or belief, but all men shall be free to profess, and, by argument, to maintain their opinions in matters of religion; and the same shall, in no wise, affect, diminish or enlarge their civil capacities; and the Legislature shall not prescribe any religious test whatever, or confer any peculiar privileges or advantages on any sect or denomination, or pass any law requiring or authorizing any religious society, or the people of any district within this State, to levy on themselves, or others, any tax for the erection or repair of any house for public worship, or for the support of any church or ministry, but it shall be left free for every person to select his religious instructor, and to make for his support such private contracts as he shall please.

WISCONSIN

Preamble

We, the people of Wisconsin, grateful to Almighty God for our freedom, in order to secure its blessings, form a more perfect government, insure domestic tranquillity and promote the general welfare, do establish this constitution.

## Article I

### Bill of Rights

Freedom of worship; liberty of conscience; state religion; public funds.

Section 18. The right of every man to worship Almighty God according to the dictates of his own conscience shall never be infringed; nor shall any man be compelled to attend, erect or support any place of worship, or to maintain any ministry, against his consent; nor shall any control of, or interference with, the rights of conscience be permitted, or any preference be given by law to any religious establishments or modes of worship; nor shall any money be drawn from the treasury for the benefit of religious societies, or religious or theological seminaries.

Religious tests prohibited.

Section 19. No religious tests shall ever be required as a qualification for any office of public trust under the state, and no person shall be rendered incompetent to give evidence in any court of law or equity in consequence of his opinions on the subject of religion.

## Article X

### Education

District schools; tuition; sectarian instruction.

Section 3. The legislature shall provide by law for the establish-

ment of district schools, which shall be as nearly uniform as practicable; and such schools shall be free and without charge for tuition to all children between the ages of four and twenty years; and no sectarian instruction shall be allowed therein.

## WYOMING

### Preamble

We, the people of the state of Wyoming, grateful to God for our civil, political and religious liberties, and desiring to secure them to ourselves and perpetuate them to our posterity, do ordain and establish this constitution.

## Article I

### Declaration of Rights

Section 18. Religious Liberty. The free exercise and enjoyment of religious profession and worship without discrimination or preference shall be forever guaranteed in this state, and no person shall be rendered incompetent to hold any office of trust or profit, or to serve as a witness or juror, because of his opinion on any matter of religious belief whatever; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace or safety of the state.

Section 19. Appropriations for religion prohibited. No money of the state shall ever be given or appropriated to any sectarian or religious society or institution.

## Article III

## Legislative Department

Section 36. Prohibited appropriations. No appropriation shall be made for charitable, industrial, educational or benevolent purposes to any person, corporation or community not under the absolute control of the state, nor to any denominational or sectarian institution or association.

## Article VII

## Education

Section 8. Distribution of school funds. Provision shall be made by general law for the equitable distribution of such income among the several counties according to the number of children of school age in each; which several counties shall in like manner distribute the proportion of said fund by them received respectively to the several school districts embraced therein. But no appropriation shall be made from said fund to any district for the year in which a school has not been maintained for at least three months; nor shall any portion of any public school fund ever be used to support or assist any private school, or any school, academy, seminary, college or other institution of learning controlled by any church or sectarian organization or religious denomination whatever.

Section 12. Sectarianism prohibited. No sectarian instruction, qualifications or tests shall be imparted, exacted, applied or in any manner tolerated in the schools of any grade or character controlled by the state, nor shall attendance be required at any religious service therein, nor shall any sectarian tenets or doctrines be taught or favored

in any public school or institution that may be established under this constitution.

APPENDIX C

CHAPTER IV



FEDERAL ACTS PROVIDING ASSISTANCE TO  
ELEMENTARY AND SECONDARY  
RELIGIOUS SCHOOLS

National School Lunch Act of 1946, Public Law 79-396

Declaration of Policy

Section 2. It is hereby declared to be the policy of Congress, as a measure of national security, to safeguard the health and well-being of the Nation's children and to encourage the domestic consumption of nutritious agricultural commodities and other food, by assisting the States, through grants-in-aid and other means, in providing an adequate supply of foods and other facilities for the establishment, maintenance, operation, and expansion of nonprofit school-lunch programs.

Nutritional and Other Program Requirements

Section 9. Lunches served by schools participating in the school-lunch program under this Act shall meet minimum nutritional requirements prescribed by the Secretary on the basis of tested nutritional research. Such meals shall be served without cost or at a reduced cost to children who are determined by local school authorities to be unable to pay the full cost of the lunch. No physical segregation of or other discrimination against any child shall be made by the school because of his inability to pay. School lunch programs under this Act shall be operated on a nonprofit basis....

Section 10. If, in any State, the State educational agency is not permitted by law to disburse the funds paid to it under this Act to nonprofit private schools in the State, or is not permitted by law to match

Federal funds made available for use by such nonprofit private schools, the Secretary shall withhold from the funds apportioned to any such State under sections 4 and 5 of this Act the same proportion of the funds as the number of children between the ages of five and seventeen, inclusive, attending nonprofit private schools within the State is of the total number of persons of those ages within the State attending school. The Secretary shall disburse the funds so withheld directly to the nonprofit private schools within said State for the same purposes and subject to the same conditions as are authorized or required with respect to the disbursements to schools within the State by the State educational agency, including the requirement that any such payment or payments shall be matched, in the proportion specified in section 7 for such State, by funds from sources within the State expended by nonprofit private schools, within the State participating in the school-lunch program under this Act. Such funds shall not be considered a part of the funds constituting the matching funds under the terms of section 7.

#### Amendments

The only significant amendment to this act is Public Law 87-823 which provided additional sums of money to schools drawing attendance from areas in which poor economic conditions exist.

#### Federal Property And Administration Services Act of 1949, Public Law 81-152

### Title II. Property Management

#### Procurement, Warehousing, and Related Activities

#### Section 203. Disposal of Surplus Property.

(j) (1) Under such regulations as he may prescribe, the Administra-

tor is authorized in his discretion to donate for educational purposes in the States, Territories, and possessions without cost (except for costs of care and handling) such equipment, materials, books, or other supplies under the control of any executive agency as shall have been determined to be surplus property and which shall have been determined under paragraph 2 or paragraph 3 of this subsection to be usable and necessary for educational purposes.

(2) Determination whether such surplus property (except surplus property donated in conformity with paragraph 3 of this subsection) is usable and necessary for educational purposes shall be made by the Federal Security Administrator, who shall allocate such property on the basis of needs and utilization for transfer by the Administrator of General Services to tax-supported school systems, schools, colleges, and universities, and to other nonprofit schools, colleges, and universities which have been held exempt from taxation under section 101 (6) of the Internal Revenue Code, 78 or to State departments of education for distribution to such tax-supported and nonprofit school systems, schools, colleges, and universities; except that in any State where another agency is designated by State law for such purpose such transfer shall be made to said agency for such distribution within the State.

(k) (1) Under such regulations as he may prescribe, the Administrator is authorized, in his discretion, to assign to the Federal Security Administrator for disposal such surplus real property, including buildings, fixtures, and equipment situated thereon, as is recommended by the Federal Security Administrator as being needed for school, classroom, or other educational use, or for use in the protection of public health,

including research.

Agriculture Act of 1954, Public Law 83-690

Title II--Amendments To Agricultural Act Of 1949, As  
Amended, And Related Legislation

Section 204. (b) Section 201 (c) of the Agricultural Act of 1949, as amended, is amended to read as follows:

"(c) The price of whole milk, butterfat, and the products of such commodities, respectively, shall be supported at such level not in excess of 90 per centum nor less than 75 per centum of the parity price therefor as the Secretary determines necessary in order to assure an adequate supply. Such price support shall be provided through loans on, or purchases of, milk and the products of milk and butterfat, and for the period ending March 31, 1956, surplus stocks of dairy products owned by the Commodity Credit Corporation may be disposed of by any methods determined necessary by the Secretary. Beginning September 1, 1954, and ending June 30, 1956, not to exceed \$50,000,000 annually of funds of the Commodity Credit Corporation shall be used to increase the consumption of fluid milk by children in non-profit schools of high school grade and under."

Amendments

Amendments since 1954 have been for the purpose of extending the milk program, and in 1970 Public Law 91-295 made the program permanent.

National Defense Education Act of 1958, Public Law 85-864

Title III--Financial Assistance For Strengthening Science,  
Mathematics, And Modern Foreign Language Instruction

### State Plans

Section 303. (a) Any State which desires to receive payments under this title shall submit to the Commissioner, through its State educational agency, a State plan which meets the requirements of section 1004 (a) and--

(1) sets forth a program under which funds paid to the State from its allotment under section 302 (a) will be expended solely for projects approved by the State educational agency for (A) acquisition of laboratory and other special equipment, including audio-visual materials and equipment and printed materials (other than textbooks), suitable for use in providing education in science, mathematics, or modern foreign language, in public elementary or secondary schools, or both, and (B) minor remodeling of laboratory or other space used for such materials or equipment....

### Loans To Nonprofit Private Schools

Section 305. (a) The Commissioner shall allot, out of funds reserved for each fiscal year for the purposes of this section under the provisions of section 302 (a), to each State for loans under the provisions of this section an amount which bears the same ratio to such funds as the number of persons in such State enrolled in private nonprofit elementary and secondary schools bears to the total of such numbers for all States.

(b) From the sums allotted to each State under the provisions of this section the Commissioner is authorized to make loans to private nonprofit elementary and secondary schools in such State for the purposes for

which payments to State educational agencies are authorized under the first sentence of section 301....

Title V--Guidance, Counseling, And Testing;  
Identification And Encouragement Of Able Students

State Plans

Section 503. (a) Any State which desires to receive payments under this part shall submit to the Commissioner, through its State educational agency, a State plan which meets the requirements of section 1004 (a) and sets forth--

(1) a program for testing students in the public secondary schools, and if authorized by law in other secondary schools, of such State to identify students with outstanding aptitudes and ability, and the means of testing which will be utilized in carrying out such program; and

(2) a program of guidance and counseling in the public secondary schools of such State (A) to advise students of courses of study best suited to their ability, aptitudes, and skills, and (B) to encourage students with outstanding aptitudes and ability to complete their secondary school education, take the necessary courses for admission to institutions of higher education, and enter such institutions.

Amendments

Public Law 88-665 amended Title III to include science, mathematics, modern foreign languages, and other critical subjects. Section 502 of Public Law 88-665 amended paragraphs (1) and (2) of section 503 (a) of the

NDEA--1958 to read "(1) a program for testing students in the public elementary and secondary schools of such State or in the public junior colleges and technical institutes of such State, and, if authorized by law, in other elementary and secondary schools and in other junior colleges and technical institutes in such State....

Economic Opportunity Act of 1964, Public Law 88-452

Title II--Urban And Rural Community Action Programs

Part A--General Community Action Programs

Statement of Purpose

Section 201. The purpose of this part is to provide stimulation and incentive for urban and rural communities to mobilize their resources to combat poverty through community action programs.

Community Action Programs

Section 202. (a) The term "community action program" means a program--

(1) which mobilizes and utilizes resources, public or private, of any urban or rural, or combined urban and rural, geographical area (referred to in this part as a "community"), including but not limited to a State, metropolitan area, county, city, town, multicounty unit, or multicounty unit in an attack on poverty;

(2) which provides services, assistance, and other activities of sufficient scope and size to give promise of progress toward elimination of poverty or a cause or causes of poverty through developing employment opportunities, improving human performance, motivation, and productivity, or bettering the conditions under which people live, learn, and work;

(3) which is developed, conducted, and administered with the maximum feasible participation of residents of the areas and members of the groups served; and

(4) which is conducted, administered, or coordinated by a public or private nonprofit agency (other than a political party), or a combination thereof.

#### Financial Assistance For Development Of Community Action Programs

Section 204. The Director is authorized to make grants to, or to contract with, appropriate public or private nonprofit agencies, or combinations thereof, to pay part or all of the costs of development of community action programs.

#### Amendments

Economic Opportunity Amendments of 1966, Public Law 89-794

#### Title VIII--Volunteers In Service To America

##### Statement of Purpose

Section 801. It is the purpose of this title to enable and encourage volunteers to participate in a personal way in the war on poverty, by living and working among deprived people of all ages in urban areas, rural communities, on Indian reservations, in migrant worker camps, and Job Corps camps and centers; to stimulate, develop and coordinate programs of volunteer training and service; and, through such programs, to encourage individuals from all walks of life to make a commitment to combatting poverty in their home communities, both as volunteers and as members of the helping professions.



### Authority To Establish VISTA Program

Section 802. (a) The Director is authorized to recruit, select, train, and--

(1) Upon request of State or local agencies or private nonprofit organizations, refer volunteers to perform duties in furtherance of programs combatting poverty at a State or local level;

### Elementary and Secondary Education Act of 1965, Public Law 89-10

#### Title I--Financial Assistance To Local Educational Agencies For The Education Of Children Of Low-Income Families And Extension Of Public Law 874, Eighty-First Congress

Section 2. The Act of September 30, 1950, Public Law 874, Eighty-first Congress, as amended (20 U. S. C. 236-244), is amended by inserting:

#### Title I--Financial Assistance For Local Educational Agencies In Areas Affected By Federal Activity

immediately above the heading of section 1, by striking out "this Act" wherever it appears in sections 1 through 6, inclusive (other than where it appears in clause (B) of section 4 (a)), and inserting in lieu thereof "this title", (sic.) and by adding immediately after section 6 the following new title:

#### Title II--Financial Assistance To Local Educational Agencies For The Education Of Children Of Low-Income Families

#### Declaration of Policy

Section 201. In recognition of the special educational needs of children of low-income families and the impact that concentrations of low-income families have on the ability of local educational agencies to support adequate educational programs, the Congress hereby declares it to be

the policy of the United States to provide financial assistance (as set forth in this title) to local educational agencies serving areas with concentrations of children from low-income families to expand and improve their educational programs by various means (including preschool programs) which contribute particularly to meeting the special educational needs of educationally deprived children.

#### Application

Section 205. (a) A local educational agency may receive a basic grant or a special incentive grant under this title for any fiscal year only upon application therefor approved by the appropriate State educational agency, upon its determination (consistent with such basic criteria as the Commissioner may establish)--

(2) that, to the extent consistent with the number of educationally deprived children in the school district of the local educational agency who are enrolled in private elementary and secondary schools, such agency has made provision for including special educational services and arrangements (such as dual enrollment, educational radio and television, and mobile educational services and equipment) in which such children can participate;

#### Title II--School Library Resources, Textbooks, And

##### Other Instructional Materials

##### State Plans

Section 203. (a) Any State which desires to receive grants under this title shall submit to the Commissioner a State plan, in such detail as the Commissioner deems necessary, which--

(2) sets forth a program under which funds paid to the State from its allotment under section 202 will be expended solely for (A) acquisition of library resources (which for the purposes of this title means books, periodicals, documents, audio-visual materials, and other related library materials), textbooks, and other printed and published instructional materials for the use of children and teachers in public and private elementary and secondary schools in the State....

Public Control Of Library Resources, Textbooks, And Other  
Instructional Material And Types Which May Be Made Available

Section 205. (a) Title to library resources, textbooks, and other printed and published instructional materials made available pursuant to this title, and control and administration of their use, shall vest only in a public agency.

(b) The library resources, textbooks, and other printed and published instructional materials made available pursuant to this title for use of children and teachers in any school in any State shall be limited to those which have been approved by an appropriate State or local educational authority or agency for use, or are used, in a public elementary or secondary school of that State.

Title III--Supplementary Educational Centers And Services

Uses of Federal Funds

Section 303. Grants under this title may be used, in accordance with applications approved under section 304 (b), for--

(a) planning for and taking other steps leading to the development of programs designed to provide supplementary educational activities

and services described in paragraph (b), including pilot projects designed to test the effectiveness of plans so developed; and

(b) the establishment, maintenance, and operation of programs, including the lease or construction of necessary facilities and the acquisition of necessary equipment, designed to enrich the programs of local elementary and secondary schools and to offer a diverse range of educational experience to persons of varying talents and needs by providing supplementary educational services and activities such as--

(1) comprehensive guidance and counseling, remedial instruction, and school health, physical education, recreation, psychological, and social work services designed to enable and encourage persons to enter, remain in, or reenter educational programs, including the provision of special educational programs and study areas during periods when schools are not regularly in session;

(2) comprehensive academic services and, where appropriate, vocational guidance and counseling, for continuing adult education;

(3) developing and conducting exemplary educational programs, including dual-enrollment programs, for the purpose of stimulating the adoption of improved or new educational programs (including those programs described in section 503 (a) (4)) in the schools of the State;

(4) specialized instruction and equipment for students interested in studying advanced scientific subjects, foreign languages, and other academic subjects which are not taught in the local schools or which can be provided more effectively on a centralized basis, or for persons who are handicapped or of preschool age;

(5) making available modern educational equipment and specially qualified personnel, including artists and musicians, on a temporary basis to public and other nonprofit schools, organizations, and institutions;

(6) developing, producing, and transmitting radio and television programs for classroom and other educational use;

(7) Providing special educational and related services for persons who are in or from rural areas or who are or have been otherwise isolated from normal educational opportunities, including, where appropriate, the provision of mobile educational services and equipment, special home study courses, radio, television, and related forms of instruction, and visiting teachers programs; and

(8) other specially designed educational programs which meet the purposes of this title.

Higher Education Act of 1965, Public Law 89-329

Title IV--Student Assistance

Contracts To Encourage Full Utilization Of Educational Talent

Section 408. (a) To assist in achieving the purposes of this part the Commissioner is authorized (without regard to section 3709 of the Revised Statutes (41 U.S.C. 5), to enter into contracts, not to exceed \$100,000 per year, with State and local educational agencies and other public or nonprofit organizations and institutions for the purpose of--

(1) identifying qualified youths of exceptional financial need and encouraging them to complete secondary school and undertake post-secondary educational training,

(2) publicizing existing forms of student financial aid, including aid furnished under this part, or

(3) encouraging secondary-school or college dropouts of demonstrated aptitude to reenter educational programs, including post-secondary-school programs.

## Title V--Teacher Programs

### Part B--National Teacher Corps

#### Statement Of Purpose And Authorization Of Appropriations

Section 511. (a) The purpose of this part is to strengthen the educational opportunities available to children in areas having concentrations of low-income families and to encourage colleges and universities to broaden their programs of teacher preparation by--

(1) attracting and training qualified teachers who will be made available to local educational agencies for teaching in such areas; and

(2) attracting and training inexperienced teacher-interns who will be made available for teaching and inservice training to local educational agencies in such areas in teams led by an experienced teacher.

#### Teacher Corps Program

Section 513. (a) For the purpose of carrying out this part, the Commissioner is authorized to--

(1) recruit, select, and enroll experienced teachers, and inexperienced teacher-interns who have a bachelor's degree or its equivalent, in the Teacher Corps for periods of up to two years;

(3) enter into arrangements (including the payment of the cost of

such arrangements) with local educational agencies, after consultation in appropriate cases with State educational agencies and institutions of higher education, to furnish to local educational agencies, for service during regular or summer sessions, or both, in the schools of such agencies in areas having concentrations of children from low-income families, either or both (A) experienced teachers, or (B) teaching teams, each of which shall consist of an experienced teacher and a number of teacher-interns who, in addition to teaching duties, shall be afforded time by the local educational agency for a teacher-intern training program developed according to criteria established by the Commissioner and carried out under the guidance of the experienced teacher in cooperation with an institution of higher education; and

(d) A local educational agency may utilize members of the Teacher Corps assigned to it in providing, in the manner described in section 205 (a) (2) of Public Law 874, Eighty-first Congress, as amended, educational services in which children enrolled in private elementary and secondary schools can participate.

Veteran's Readjustment Benefits Act of 1966, Public Law 89-358

Subchapter I--Purpose--Definitions

Section 1651. Purpose. The Congress of the United States hereby declares that the education program created by this chapter is for the purpose of (1) enhancing and making more attractive service in the Armed Forces of the United States, (2) extending the benefits of a higher education to qualified and deserving young persons who might not otherwise be able to afford such an education, (3) providing vocational readjustment and restoring lost educational opportunities to those service men and

women whose careers have been interrupted or impeded by reason of active duty after January 31, 1955, and (4) aiding such persons in attaining the vocational and educational status which they might normally have aspired to and obtained had they not served their country.

Section 1652. Definitions. For the purposes of this chapter--

(a) (1) The term "eligible veteran" means any veteran who (A) served on active duty for a period of more than 180 days any part of which occurred after January 31, 1955, and who was discharged or released therefrom under conditions other than dishonorable or (B) was discharged or released from active duty after such date for a service-connected disability.

(c) The term "educational institution" means any public or private secondary school, vocational school, correspondence school, business school, junior college, teachers' college, college, normal school, professional school, university, or scientific or technical institution, or any other institution if it furnishes education at the secondary school level or above.

#### Amendments

The original bill, the Servicemen's Readjustment Act of 1944, P. L. 78-346 terminated its benefits in 1955. The Veteran's Readjustment Benefits Act of 1966 extends benefits to those who served after 1955.

Child Nutrition Act of 1966, Public Law 89-642

#### Declaration of Purpose

Section 2. In recognition of the demonstrated relationship between



food and good nutrition and the capacity of children to develop and learn, based on the years of cumulative successful experience under the national school lunch program with its significant contributions in the field of applied nutrition research, it is hereby declared to be the policy of Congress that these efforts shall be extended, expanded, and strengthened under the authority of the Secretary of Agriculture as a measure to safeguard the health and well-being of the Nation's children, and to encourage the domestic consumption of agricultural and other foods, by assisting States, through grants-in-aid and other means, to meet more effectively the nutritional needs of our children.

#### School Breakfast Program Authorization

Section 4. (a) There is hereby authorized to be appropriated for the fiscal year ending June 30, 1967, not to exceed \$7,500,000; and for the fiscal year ending June 30, 1968, not to exceed \$10,000,000, to enable the Secretary to formulate and carry out, on a nonpartisan basis, a pilot program to assist States through grants-in-aid and other means, to initiate, maintain, or expand nonprofit breakfast programs in schools.

#### Nonprofit Private Schools

(f) The withholding of funds for and disbursement to nonprofit private schools will be effected in accordance with section 10 of the National School Lunch Act, as amended, exclusive of the matching provisions thereof.

#### Amendments

Amendments since this act have been for the purpose of extending and expanding the school breakfast program.

# THE UNIVERSITY OF NORTH CAROLINA AT GREENSBORO



*School of Education*

July 31, 1970

Mr. MacDonald Gallion  
Attorney General  
State Capitol Building  
Montgomery, Alabama 36104

Dear Mr. Gallion:

Your State laws are of great importance to a study that I am now conducting. That study is part of my doctoral dissertation, entitled On the Legality of Using Public Funds for Religious Schools as Interpreted by Federal Court Decisions. An important part of the dissertation is a chapter which will present a treatise on the laws of the fifty states which, in any way, allow public monies to be used for the purposes of parochial schools or parochial school students.

After having written numerous national organizations, and federal government agencies, I am as certain as possible that no exhaustive study of this nature exists. Yet the subject is both timely and controversial, and there is a need on the part of state officials and educators for more information on this topic. Your assistance would greatly expedite the required research for this work.

Mr. Gallion, as the Attorney General of Alabama, you are certain to be busy at your important work, and I know that your time is extremely valuable; therefore, you may be assured that I will appreciate your cooperation. And, of course, I will be certain to send you a copy of the completed study. The enclosed data sheet asks for the codes to your state laws (if any) which make public funds available to parochial schools or parochial school students, in any manner, and for any purpose.

Won't you please lend me your valuable help by completing the data sheet, and returning it in the self-addressed, stamped envelope? Thank you very much.

Sincerely yours,

Michael R. Smith

GREENSBORO, NORTH CAROLINA / 27412

Would you please list below the codes to your State laws that make public funds available to parochial schools or parochial school students? For example, your State may have laws which:

(1) Permit parochial school students to be transported on public school busses; what is the code to that State law? \_\_\_\_\_

(2) Permit the State to furnish textbooks to all children (including parochial) of the State; what is the code to that State law? \_\_\_\_\_

(3) Permit the reimbursement to school districts engaged in shared time education between public and parochial schools; what is the code to that State law? \_\_\_\_\_

(4) Permit State funding of certain private (including parochial) schools; what is the code to that State law? \_\_\_\_\_

(5) Permit school lunches, and/or health services to be made available to all children of the State; what are the codes to those State laws? \_\_\_\_\_

(6) Permit driver education training to be provided to all (including parochial) children of the State; what is the code to that law? \_\_\_\_\_

(7) Permit the purchase of secular educational services by the State for all (including parochial) students or schools; what is the code to that law? \_\_\_\_\_

(8) Permit the State to pay any percentage of the salaries of certain teachers of parochial schools; what is the code to that law? \_\_\_\_\_

(9) Permit State grants to parents of children in parochial schools (or private, or nonpublic schools); what is the code to that law? \_\_\_\_\_

(10) Permit any other types of assistance to nonpublic schools, or to parochial schools, or to all schools or school students, however defined; what are the codes to those laws?

\_\_\_\_\_  
\_\_\_\_\_

.....  
.....

(OR)

Your State may have no laws whatsoever which would aid, in any manner, nonpublic or parochial schools. In that case, please check here (\_\_\_\_\_), and return the sheet in the enclosed envelope.

.....  
.....

If you would like to have a copy of the completed study, please check here (\_\_\_\_\_) .

.....  
.....

Thank you again for your assistance.

Michael R. Smith

STATE ACTS PROVIDING ASSISTANCE TO  
ELEMENTARY AND SECONDARY  
RELIGIOUS SCHOOLS

...ALABAMA...

...ALASKA...

...ARIZONA...

...ARKANSAS...

...CALIFORNIA...

Transportation--Supplementary Services

Section 16806. Transportation of pupils attending other than public school. The governing board of any school district may allow pupils entitled to attend the school of the district, but in attendance at a school other than a public school, under the provisions of Section 1215<sup>1</sup>, transportation upon the same terms and in the same manner and over the same routes of travel as is permitted pupils attending the district school.

The allowance of this section shall be restricted to actual transportation when furnished by the district to children attending the district school, and nothing in this section shall be construed to authorize or permit in lieu of transportation payments of money to parents or guardians of children attending private schools.

Textbooks--Sale and Price

Section 9653. Sales to private parties.--The State Board of Education may provide for the sale at not less than cost price of state textbooks to

private schools, individuals, or dealers under such rules and regulations as may be adopted by the Board of Education.

Driver Education--Allowances by Superintendent of Public Instruction

Section 18251.2. Allowances by the Superintendent of Public Instruction shall be made only for driver training classes maintained in accordance with the rules and regulations as set forth by the State Board of Education.

Driver training shall be available without tuition to all eligible students commencing on July 1, 1969. The governing board of a district may make driver training available during school hours, or at other times, or any combination thereof.

Lunches--Specific Provisions--Surplus Property

Section 451. Designation. The State Department of Education is hereby designated as the California State Educational Agency for Surplus Property.

Section 452. Cooperation with Federal Government. Said agency is authorized and directed to co-operate with the Federal Government and its agencies in securing the expeditious and equitable distribution of surplus property of the Federal Government to eligible institutions in California, to assist said institutions in securing such property and to do all things necessary to the execution of its powers and duties.

Section 453. Acquisition and disposition of property from Federal Government. Whenever by the provisions of any act of Congress or any rule or regulation adopted thereunder the agency is authorized to accept, receive, or purchase for resale from the Federal Government or any agency thereof,

any property and to provide for its disposition or resale, it is authorized to do so and is vested with all necessary power and authority to accomplish such acceptance, purchase, receipt, disposition and resale. The agency is hereby exempted from the provisions of Article 2, Chapter 4, Part 3, Division 3, Title 2 of the Government Code.

...COLORADO...

Transportation--Administration of Districts

Section 123-10-43. Board may furnish transportation--when.--In any school district except a school district of third class the board of education or high school committee or high school board may furnish transportation to and from any school building to such pupils as shall in the opinion of the board of education or high school committee or high school board require such transportation and may determine the route for such transportation, and also the points at which pupils will be received and delivered.

Section 123-10-44. Transportation--third class districts.--In school districts of the third class the board of directors duly authorized by a majority vote of the qualified electors voting at a general or special election shall transport pupils to and from school. The board of directors may determine the route for such transportation and the points at which pupils will be received and delivered.

Use of Federal Funds

Section 123-30-10 (31). To provide, in the discretion of the local board, out of federal grants made available specifically for this purpose, special educational services and arrangements, such as dual enrollment, educational radio and television, and mobile educational services, for the

benefit of educationally deprived children in the district who attend nonpublic schools, without the requirement of full time public school attendance, and without discrimination on the ground of race, color, religion, or national origin.

(32). To provide, in the discretion of the local board, out of federal grants made available specifically for this purpose, library resources, which for the purposes of this chapter shall mean books, periodicals, documents, magnetic tapes, films, phonograph records, and other related library materials, and printed and published instructional materials for the use and benefit of all children in the district, both in the public and nonpublic schools, without charge and without discrimination on the ground of race, color, religion, or national origin.

...CONNECTICUT...

#### Transportation

Section 10-281. Transportation for pupils in nonprofit private schools.

(a) Any town, city, borough or school district may provide, for its children attending private schools therein, not conducted for profit, when a majority of the children attending such school are from such municipality, any transportation services provided for its children attending public schools. Any such municipality which on October 1, 1957, was providing such services may continue to furnish the same until an official determination to the contrary is voted under the provisions of subsection (b) hereof. (b) The chief executive authority of any such municipality shall, upon petition of at least five per cent of the electors as determined by the last-completed registry list, submit the question of deter-

mining whether the services specified in subsection (a) may be so provided to a vote of the electors of such municipality at a special meeting called for such purpose within twenty-one days after the receipt of such petition. Such petition shall contain the street addresses of the signers and shall be submitted to the municipal clerk, who shall certify thereon the number of names of electors on such petition, which names are on the last-completed registry list. Each page of such petition shall contain a statement, signed under the penalties of perjury, by the person who circulated the same, that each person whose name appears on such page signed the same in person and that the circulator either knows each such signer or that the signer satisfactorily identified himself to the circulator. The warning for such meeting shall state that the purpose of such meeting is to vote on determining whether the services may be provided. Such vote shall be taken and the results thereof canvassed and declared in the same manner as is provided for the election of officers of such municipality, except that absentee voting shall not be permitted. The vote on such determination shall be taken by voting machine and the designation of the question on the voting machine ballot label shall be "For transportation for children attending private schools, YES" and "For transportation for children attending private schools, NO" and such ballot label shall be provided for use in accordance with the provisions of section 9-250. If, upon the official determination of the result of such vote, it appears that the majority of all the votes so cast are in approval of such question, the provisions of subsection (a) shall take effect at the beginning of the next fiscal period of such municipality.



Any private high school or other private secondary school which provides for enrolled pupils in such school the course of study of motor vehicle operation and highway safety developed pursuant to section 10-24 of the 1965 supplement to the general statutes in accordance with the regulations of the state board of education shall receive the grant provided in section 10-24a of the 1965 supplement to the general statutes. Applications for such grants shall be made in the manner prescribed by the state board of education to said board. Upon certification by said board as to the payee and amount of the grant, the comptroller shall draw his order on the treasurer in favor of the payee and in the amount so certified.

Health and Welfare Services--Public Act 481-68

Section 1. Each town which provides health and welfare services for children attending its public schools shall provide the same health and welfare services for children attending private schools therein, not conducted for profit, when a majority of the children attending such schools are from such municipality. Such health and welfare services shall include the services of a school physician, school nurse and dental hygienist, school psychologist, speech remedial services, school social worker's services, special language teachers for non-English speaking students and such similar services as may be provided by said town to children in attendance at public schools.

Section 2. Any town providing such services for children attending such private schools shall be reimbursed by the state for the amount paid for such services. At the close of each school year any town which provides such services shall file an application for such reimbursement on a form to be provided by the state board of education. Payment shall be made as

soon as possible after the close of each fiscal year.

Section 3. This act shall take effect July 1, 1968.

Use of Federal Surplus Property--Public Act 482-68

Section 1. Section 4-120a of the general statutes is repealed and the following is substituted in lieu thereof: The director of purchases is designated as the official agency of the state to acquire, warehouse and distribute surplus personal property of the federal government and to act on behalf of any state agencies or other donees eligible for such federal surplus personal property under federal legislation or regulations, and is authorized to execute, with the approval of the attorney general, any certification or agreement required by the federal government and to take all other action necessary or appropriate to cooperate with the federal government in carrying out the purpose of any federal act or regulation in connection with such surplus personal property. All moneys or other assets derived from the sale of property acquired under the provisions of this section shall be credited to the revolving fund established by section 4-122 and may be expended after allotment in accordance with law.

Section 2. This act shall take effect July 1, 1967.

For Deprived Children--Public Act 506-67

Section 10-266a of the 1965 supplement to the general statutes is repealed and the following is substituted in lieu thereof: (a) Any town or regional school district shall be eligible to receive grants as hereinafter provided to assist in furnishing special educational programs or services designed to improve or accelerate the education of children whose educational achievement has been or is being restricted by economic, social or

environmental disadvantages, provided such programs shall be designed primarily to meet the educational needs of educationally deprived children. "Educationally deprived children" means children of families with annual incomes of less than four thousand dollars or of children receiving state aid for dependent children, and provided such programs shall be approved by the state board of education. (b) Any town or regional school district applying for such grant shall show that any funds so received are to be used for providing for such children special educational opportunities, such as pre-kindergarten education; remedial programs; work-study programs; reduced class size; school library collections; special tutoring; programs for school drop-outs; and ancillary services, innovations or experimental programs approved by the state board of education, and shall submit plans for said programs in such detail as the state board of education may require. (c) To the extent consistent with the number of educationally deprived children in such town or school district who are enrolled in private elementary and secondary schools, such town or school district shall make provision for including such educational services and arrangements in which such children can participate. The specialized educational services and arrangements shall be those which are designed to meet the special educational needs of the educationally deprived children, including such services as may be provided under P.L. 89-10 of the eighty-ninth congress.

Purchase of Services--Public Act 791-69

Section 1. This act shall be known as the "Nonpublic School Secular Education Act."

Section 2. The public policy of this state is, and has long been, that

all children be furnished a good education. Quality education enables children to become citizens capable of intelligently exercising their responsibilities in a democracy and of contributing to the state's economic and civic well being. Good education is offered to children of this state in the public and in the nonpublic schools. The public purpose of compulsory education laws is achieved by children attending either kind of school. As a result both kinds of schools contribute to the general good. Although the state has a primary obligation to support the public schools, it has, in recent years, also assisted children attending nonpublic schools. Forms of assistance have included bus transportation, health and welfare services and grants for special education. Likewise a number of federal education programs offer financial assistance to all secondary and elementary schools, public and nonpublic. Some nonpublic schools are established by religious organizations. To the extent that such schools teach religious subjects, the intent of this act is that no financial assistance to them shall support or advance any religion or any instruction in religious tenets, doctrine, or worship. However, such church established schools also offer good secular education in subjects comparable to those taught in public schools. To the extent these church established schools teach secular subjects in a secular manner, they are entitled to the same assistance as other nonpublic schools. As part of a general program to promote education, the state can properly support the public schools and render some financial aid to the nonpublic schools.

Section 3. As used in this act: (a) "Secretary" means secretary of the state board of education. (b) "Nonpublic school" means an elementary or secondary school within the state, other than a public school, offering education for grades one through twelve, or any combination of them,

wherein any child may legally fulfill compulsory school attendance requirements and which complies with the provisions of section 10-188 of the general statutes. (c) "Approved nonpublic school" means a nonpublic school approved by the secretary in accordance with the provisions of this act and eligible for reimbursement under this act. (d) "Student" means any child who is a permanent resident of the state and who is enrolled as a full time pupil in an approved nonpublic school in grades one through twelve. A child who boards at a Connecticut school but has no other residence in the state shall not be deemed to be a permanent resident of the state within the meaning of this act. (e) "Secular educational services" means providing instruction in a secular subject. (f) "Secular subject" means any course which is presented in the curricula of the public schools of this state. Such a course, if taught in a nonpublic school shall be a "secular subject" if the textbooks used for such course are the same as those in use or have been used within five years in a public school, or are approved by the secretary, and if the manner of teaching does not indoctrinate, promote or prefer any religion or denominational tenets or doctrine. A secular subject shall not include any instruction in religious or denominational tenets, doctrine, or worship. (g) "Teacher" means a person instructing secular subjects and shall not mean a person who is devoting more than a majority of his time performing the duties of a school superintendent, principal, department head, or administrator. (h) "Open enrollment" means the offer by a school of the opportunity of admission to any qualified student meeting its academic and other reasonable admission requirements, to the extent required by this act, without regard for race, religion, creed or national origin.

Section 4. This act shall be administered by the secretary in accordance

with policies formulated and regulations adopted by the state board of education for the administration and implementation of this act. The secretary is authorized to make contracts, execute instruments, and to do all acts necessary and convenient to administer this act. He is further authorized to appoint a director of nonpublic school secular education, who shall be in the unclassified service of the state, and such other necessary personnel as shall be approved by the board of education, to assist him in the administration of this act.

Section 5. The secretary shall contract with a corporation, association, or other entity operating an approved nonpublic school, to purchase secular educational services for students, and to pay the cost of said services. The cost of secular educational services contracted for shall be limited to the following: (a) Twenty per cent of the salaries of teachers teaching secular subjects; (b) The cost of textbooks used for said subjects but not to exceed in any school year ten dollars per student enrolled in grades one through eight and fifteen dollars per student enrolled in grades nine through twelve.

Section 6. The salaries of teachers in nonpublic schools for purposes of reimbursement under this act, shall mean and be limited as follows: (a) Salaries shall mean the base amount in dollars actually paid by a nonpublic school to nonpublic school teachers and shall not include allowances, contributions, or credits for medical, health, hospitalization, or life insurance; for retirement or pension funds; for the cost of additional teacher training or education; or for any other fringe benefit. (b) Salaries of nonpublic school teachers having a bachelor's degree, a master's degree, sixth year of study, or doctorate degree shall be reim-

bursable only up to and not in excess of the average minimum salaries in the state on salary schedules of public school teachers having comparable degrees or hours of study, as determined by the secretary. (c) The salary of a teacher in nonpublic schools who teaches secular subjects and performs administrative or other duties shall have his salary apportioned on the basis of the number of hours spent in each of these categories and reimbursement shall be made under this act on the basis of the portion of his salary attributed to teaching secular subjects. (d) For each nonpublic school, the number of teachers whose salaries are reimbursable under this act, shall not exceed one twenty-fifth of the number of full time students enrolled in that school.

Section 7. No portion of the salary of any teacher in a nonpublic school who during the regular school day teaches any subject matter expressing religious teaching or instructs in religious or denominational tenets, doctrine, or worship shall be reimbursable under this act.

Section 8. In order for the salary of a teacher to be reimbursable to the nonpublic school under this act, the nonpublic school teacher shall meet all the state board of education requirements for certification as a public school teacher, except (a) teachers employed full time in an approved nonpublic school on the effective date of this act shall be deemed qualified and their salaries reimbursable hereunder for a period of three years from the effective date of this act, after which such teachers must satisfy the aforesaid certification requirements; and (b) teachers starting employment in an approved nonpublic school after the effective date of this act and prior to three years from such effective date must possess a bachelor's degree from an accredited institution of

higher education and after said three year period from the effective date of this act must satisfy the aforesaid certification requirement. For the purposes of this act, state board of education certification requirements for years of teaching experience shall be deemed satisfied by teaching in a nonpublic school for the period of time required to teach in a public school.

Section 9. Teachers in the nonpublic school shall not, by reason of any provisions of this act, be deemed to be employees of the state or any public board of education or be entitled to any of the rights of public school teachers provided for in title 10 of the general statutes.

Section 10. Textbooks, the cost of which are reimbursable under this act, shall be any textbooks which are in use or have been used within five years of September 15 of the year for which reimbursement is sought, in any public school in the state. A nonpublic school seeking reimbursement for a textbook which is not or has not been in such use, may submit said textbook to the secretary, and if he approves the same as complying with the provisions and purposes of this act, its cost shall be reimbursable under this act.

Section 11. A nonpublic school which has enrolled as students educationally deprived children, as such children are defined in section 10-266 (a) of the general statutes, shall be entitled to an increase in the percentage of teacher salaries reimbursable under this act, as follows: If at least one third of the nonpublic school full time student enrollment consists of educationally deprived children, the school shall be reimbursed in the amount of fifty per cent of the salaries of teachers qualifying under this act; if at least two thirds of the nonpublic full time



student enrollment consists of educationally deprived children, the school shall be reimbursed to the extent of sixty per cent of the salaries of teachers qualifying under this act. However, any sums received by a non-public school from the state or from local or regional boards of education pursuant to sections 10-266a through 10-266e shall be credited against and shall accordingly reduce the increased amount payable under this section.

Section 12. To be approved for reimbursement under this act, a nonpublic school shall meet and, as a condition of approval, continue to meet the following requirements: (a) The school shall be approved by the secretary as providing secular educational courses required by law, complying with good educational standards, and meeting adequate safety, sanitary, and construction requirements. (b) The school shall not be operated for profit. (c) The school shall file annually with the secretary a certificate of compliance with Title VI of the Civil Rights Act of 1964 (Public Law 88-352), as amended. (d) The school shall have a policy of open enrollment for all qualified students meeting its academic and other reasonable admission requirements without regard to race, religion, creed, or national origin as follows: A nonpublic school, which is financially supported by regular contributions made by parishioners or other supporters independent of their children's attendance at the school, may give a preference in admission to children of such parishioners or contributors. However, every nonpublic school shall admit each year after the effective date of this act all qualified applicants meeting its academic and other reasonable admission requirements, in that number which bears the same proportion to the total number of students admitted as the amount reimbursable to said nonpublic school under this act in the school year prior

to the year of admission bears to the total cost of operating that school in that year. For the first year of operation under this act the open enrollment hereby required shall be based upon a reasonable estimate for that year of the amount reimbursable under this act and the amount of total operating cost. Operating costs shall not include the cost of purchasing, constructing, altering or making capital improvements of or to any nonpublic school, or payments of principal, interest, or any other charges on any mortgage, bonds or other forms of indebtedness to finance the same.

(e) The nonpublic school shall not engage specifically in educating students to become ministers of religion or to enter upon some other religious vocation. (f) A nonpublic school shall not be reimbursed under this act for educational services for which it receives state aid for rendering such services to "children requiring special education," as such children are defined in section 10-75a of the general statutes.

Section 13. The secretary shall make provision for visitation and inspection of every nonpublic school which applies for approval under this act and for the visitation and inspection thereafter as often as may be necessary to assure that said school is complying with good educational standards, meeting adequate safety, sanitary, and construction requirement, and fulfilling the requirements of this act.

Section 14. (a) Any applying nonpublic school denied approval for reimbursement under this act shall be given written notice by registered mail by the secretary stating the reasons for such denial. The applicant may within fifteen days of the date of the mailing of said notice make a request in writing by registered mail directed to the secretary for a hearing on said denial. The secretary shall notify the applicant in

writing, within ten days of the receipt of the request, of the place and date of hearing, which hearing shall be held not less than thirty days from the date of mailing of said notice. The hearing may be conducted by the secretary or by a hearing officer appointed by the secretary in writing. The applicant shall be entitled to be represented by counsel and a transcript of the hearing shall be made. If the hearing shall be conducted by the hearing officer, he shall state his findings and make a recommendation to the secretary on the issue of the denial of the approval. The secretary, based upon said findings and recommendations of the hearing officer, or after a hearing conducted by the secretary, shall render a decision in writing denying the application or granting it in accordance with the provisions of this act. A copy of such decision shall be sent by registered mail to the applicant. An applicant aggrieved by said decision may appeal to the superior court as provided for in subparagraph (c) of this section. (b) When the secretary has reason to believe a nonpublic school approved under this act has failed substantially to comply with the provisions of this act, he may notify said nonpublic school in writing of his intention to suspend or revoke the approval. Such notice shall be served by registered mail stating the particular reasons for the proposed action and fixing a place and a date, not less than thirty days from the date of mailing of said notice, for a hearing on said action. The hearing may be conducted by the secretary or by a hearing officer appointed by the secretary in writing. The nonpublic school and the secretary or hearing officer may issue subpoenas requiring the attendance of witnesses. The nonpublic school shall be entitled to be represented by counsel and a transcript of the hearing shall be made. If the hearing is conducted by a hearing officer, he shall state his findings and make a

recommendation to the secretary on the issue of revocation and suspension. The secretary, based upon said findings and recommendation of the hearing officer, or after a hearing conducted by the secretary, shall render his decision in writing suspending, revoking or continuing said approval. A copy of the decision shall be sent by registered mail to the nonpublic school. The nonpublic school aggrieved by the decision of the secretary may appeal to the superior court as provided in subparagraph (c) of this section. (c) Any nonpublic school aggrieved by a decision of the secretary rendered under subparagraphs (a) and (b) of this section may appeal the decision of the secretary to the Superior Court for Hartford County within thirty days after the date of mailing of said decision by registered mail to the nonpublic school. Such appeal shall have precedence in the order of trial as provided in section 52-192 of the general statutes. All appeals taken pursuant to this section shall be based solely upon the record of the hearing conducted pursuant to subparagraphs (a) and (b) of this section. The court shall determine whether the secretary acted arbitrarily, unreasonably or contrary to law.

Section 15. No nonpublic school started after the effective date of this act shall be eligible to apply for approval under this act until three years have elapsed after it has notified the secretary in writing of its intention to start a school and gives the secretary a description of the type of school, location, approximate number of students to be enrolled, and such other information as shall be prescribed in regulations or rules adopted under this act. A nonpublic school approved under this act shall as a condition of continued approval file with the secretary a notice of its intentions to start a new school, expand, contract or terminate an

existing school, change the area served by the school, or make any other significant change in the operation of said school which would affect the availability or quality of educational facilities in the town or regional school district in which the nonpublic school is located. Such notice shall be given at least two years prior to the contemplated change unless good cause is shown by the school for a shorter notice. Failure to give said notice shall be grounds for revocation of approval of such school under this act. The secretary shall notify the town or regional board of education affected by said anticipated changes and shall encourage joint planning by public and nonpublic school officials to avoid unnecessary duplication of facilities and to achieve an adequate availability and a balanced and sound growth of educational facility in each municipality or region.

Section 16. The secretary shall encourage boards of education of public schools and governing boards of nonpublic schools to share facilities and personnel on a voluntary basis. No public school students shall be required to attend classes and no public school teachers shall be required to teach in a nonpublic school.

Section 17. The state board of education shall adopt regulations to effectuate the purposes of this act. The secretary shall prescribe such rules and forms; require nonpublic schools to furnish such records and information, included but not being limited to anticipated school enrollment, teacher salaries and textbook costs; administer such tests and examinations, and make such administrative determinations as are appropriate for the sound and reasonable administration of this act and the prevention of violations thereof. Said secretary shall, at regular intervals,

require of each nonpublic school an audit of all financial and other records which relate to the secular educational services for which reimbursement is claimed under this act, and shall not authorize payment for any services supplied by any such school if he finds that the cost thereof is excessive or the services have been rendered in violation of this act.

Section 18. Requests for reimbursement and the payment for the purchase of secular educational services hereunder shall be made on such forms and under such conditions as the secretary shall prescribe. Reimbursement payment shall be made by the secretary in four equal installments payable on the first day of September, December, March and June of the school year following the school year in which the secular educational services were rendered. The secretary shall contract to pay the cost of secular educational services rendered for the school year commencing on September, 1969 and the first installment shall be paid for said services to approved nonpublic schools on September 1, 1970.

Section 19. In counting the number of students as a basis for reimbursement under any provisions of this act, a student shall not be counted whose parent or guardian shall file with the nonpublic school of attendance a written request that his child not be counted under this act.

Section 20. There shall be an advisory council on nonpublic school secular education which shall consist of the secretary, as an ex officio member, and nine members appointed by the governor as follows: Four members shall be affiliated with nonpublic schools in the state, not more than two of whom shall be affiliated with church related schools; two members shall be members of a school board of education of any town or region:

and three shall be appointed at large from among electors of the state. Of the members first to be appointed, three shall be appointed for terms of one year each, three shall be appointed for terms of two years each, and three for terms of three years each. The successors of the members first appointed shall be appointed for four year terms. Vacancies other than by expiration of terms shall be filled by appointment by the chairman of the state board of education for the unexpired term. All members of the council shall serve without compensation except for reimbursement for their necessary expenses incurred in the performance of their duties. The advisory council shall consult with and advise the state board of education as to the formulation of policies and as to the implementation of the provisions of this act. The council shall meet at least quarterly at the call of the secretary and at such other times as the council shall determine. The state board of education shall furnish such equipment and staff as is necessary to implement the work of the council.

Section 21. There is established a commission of twenty members to study public assistance to nonpublic elementary and secondary schools. Said commission shall consist of the following: The house of representatives and senate chairmen of the joint standing committee on education; four members of the house of representatives of which two shall be appointed by the speaker and two by the house minority leader; four members of the senate of which two shall be appointed by the president pro tem and two by the senate minority leader; six persons appointed by the governor, four of whom shall be affiliated with nonpublic secondary and elementary schools in the state and at least two of whom shall be affiliated with church related schools and two of whom shall be members of a town or regional

board of education; and four members appointed by the governor at large from among the electors of this state. The commission shall consider but not be limited in its inquiry, to the following: (a) the financial stability of nonpublic schools; (b) the consequences of termination of a substantial number of nonpublic schools; (c) appropriate kinds of financial assistance to nonpublic schools; (d) the consequences and the proper limits of public intervention and control of nonpublic schools; (e) an evaluation of the quality and standards of education in nonpublic schools; (f) the long range impact of state assistance upon the public schools; (g) the experience in other states and countries providing public assistance to nonpublic schools; and (h) such other aspects of the problem as to the commission may be relevant. The commission may employ such administrative, research, consultative, and secretarial staff as it finds necessary to fulfill its duties hereunder. Members of the commission shall serve without compensation, but shall be reimbursed for necessary expenses actually incurred in the performance of their duties. The commission shall make a report of its study and recommendations to the governor and to the general assembly not later than December 1, 1970.

Section 22. (a) Not more than two per cent of the amount appropriated hereunder shall be used for administration of this act. (b) In the event that in any fiscal year the amount appropriated is insufficient to carry out the purposes of this act, the secretary shall pay first, the cost of administration of this act; second, the valid claims of each approved nonpublic school for reimbursement for textbooks hereunder; third, the cost of the increase in the percentage of teacher salaries reimbursable under section 11 of this act but not to exceed one million dollars; and fourth, shall pay the remaining amount of valid claims of each approved nonpublic



school for reimbursement for secular educational services rendered hereunder in the proportion that the balance of the amount appropriated bears to the total remaining amount of the valid claims of all approved non-public schools in that fiscal year.

Section 23. No portion of the fund referred to in article 3, section 4 of the constitution of the state and called the "school fund" shall be used to make any payment under this act.

Section 24. Any taxpayer of this state may institute a suit in any state court having jurisdiction for an injunction, declaratory judgment, or other appropriate relief contesting the constitutionality of this act under the state or the United States constitutions. Said suit may be instituted at any time after the effective date of this act and whether or not monies have been previously paid to a nonpublic school hereunder. Such action shall have precedence in the order of trial as provided in section 52-192 of the general statutes.

Section 25. If any part of this act shall be held invalid, such holding shall not effect the validity of the remaining parts of this act. If a part of this act is invalid in one or more of its applications, the remaining parts of this act shall remain in effect in all valid applications that are severable from the invalid applications.

Section 26. The sum of six million dollars is appropriated to carry out the purposes of this act.

Section 27. This act shall take effect on July 1, 1969.

...DELAWARE...

Transportation of Students of Nonpublic, Nonprofit Elementary and High Schools

Section 2905. The State Board of Education shall make rules and regulations concerning the transportation of pupils in nonpublic, nonprofit elementary and secondary (high) schools in the State of Delaware. Such rules and regulations shall provide for at least the following:

(a) All rules and regulations relative to pupil transportation to nonpublic, nonprofit schools shall be the same as those applicable to public schools.

(b) Such rules and regulations shall limit transportation of pupils in nonpublic, nonprofit schools to the elementary and secondary schools, except as provisions of this title may assign such transportation responsibility to the State Board of Education in behalf of pupils enrolled at other levels in a public school system.

(c) It shall not be the obligation of the State of Delaware to transport pupils enrolled in nonpublic, nonprofit schools as herein described across public school district lines. Transportation of these pupils shall be restricted to transportation within the described boundaries of a public school district.

Driver Education Instruction in Nonpublic High Schools

Section 131. The State Board of Education shall make rules and regulations concerning instruction in Driver Education in nonpublic high schools. Such rules and regulations shall provide for at least the following:

(a) The qualification of teachers for Driver Education in nonpublic high schools shall be the same as the qualification for teachers in the public high schools.

(b) Unless modified by other statutes enacted after July 1, 1967, the ratio of teachers to pupils for assignment of Driver Education teachers in nonpublic high schools shall be based upon one teacher for each 140 tenth grade pupils enrolled in the nonpublic high school; or one-fifth of a teacher assignment for each full 28 tenth grade pupils.

(c) General supervision for the program of instruction in Driver Education in nonpublic high schools shall be under the jurisdiction of the State Board of Education or as this supervision may be assigned to a local public school district.

(d) Assignment of teachers to nonpublic high schools shall be by authority of the State Board of Education and the Board shall have the authority to require from the nonpublic high schools a statement of certified enrollment on such date and in such form as the Board may require for making the decision relative to assignment.

(e) Salary for teachers in nonpublic high schools, when paid from funds of the State of Delaware, shall be in accord with the regularly adopted salary schedule set forth in Chapter 13 of this Title.

(f) Any local salary supplement paid to Driver Education teachers assigned to nonpublic high schools may be paid by the public school district to which such teacher is assigned.

(g) For purposes of administration and supervision, the teachers of Driver Education in nonpublic high schools shall be assigned to the faculty of a public high school. The State Board of Education shall be responsible for designating such assignment. The assignment of a teacher to a public high school for purposes of driving instruction in a nonpublic high school shall be made as an assignment in addition to any assignment authorized to that public high school in accord with the unit program set

forth in Chapter 17 or any other portion of this Title.

(h) Funds of the payment of the State portion of any salary due to teachers of Driver Education in nonpublic high schools shall be appropriated to a contingency fund to be administered by the Budget Director for the State of Delaware and to be paid in accord with appropriate fiscal documents presented by the public school district to which the teacher has been assigned.

(i) A teacher of Driver Education may be assigned to several nonpublic or nonpublic and public high schools in accord with the ratio for assignment as set forth in this section.

...FLORIDA...

...GEORGIA...

...HAWAII...

### Driver Education

Section 299-1. Driver education. (a) The department of education may establish and administer a motor vehicle driver education and training program to be conducted at each public high school in the State after regular school hours, on Saturdays, and during the summer recess.

(b) The department shall, for the purpose of this section:

(1) Set the prerequisites and priorities for enrollment in the course of driver education and training which shall be open to every resident of the State who is fifteen years of age or older and under nineteen years of age;

(2) Establish the requirements for and employ necessary instructors, who are certified to have completed satisfactorily an approved

instructor's course, to conduct the course in driver education and training;

(3) Issue a certificate of completion to every student upon satisfactory completion of the course in driver education and training;

(4) Purchase, rent, or acquire by gift materials and equipment necessary for the program established by this section; and

(5) Cooperate with the chief of police in each county in promoting traffic safety.

(c) The department may promulgate rules and regulations, in conformance with chapter 91 necessary for the purposes of this section and section 299-2.

Tax Credits for Student Attending Institutions of Higher Education and for Dependent Children Attending School in Grades Kindergarten to Twelve

Section 235-57. (a) For purposes of this section, an institution of higher education is defined to include technical schools, institutes, junior colleges, colleges, universities, and like institutions offering a formal educational program of a professional, academic, or occupational nature beyond the high school level.

(b) For each person, constituting a personal exemption allowed a taxpayer under the Internal Revenue Code and section 235-54, who was duly registered and in attendance as a student in an institution of higher education for not less than one-half of the course work of a full-time student at such institution and for not less than four months of the taxable year for which an individual net income tax return was filed, or who was enrolled and in attendance as a student at school in grades kindergarten through twelve for not less than four months of the taxable year for which an individual net income tax return was filed, there shall be

allowed to such resident taxpayer claiming such exemption, tax credits in the amount indicated for each adjusting gross income tax bracket as shown in the table below; provided, that no person who is claimed, or is eligible to be claimed as a dependent, for federal or Hawaii state individual net income tax purposes by another shall be allowed to claim the tax credit as provided in this section.

<u>Adjusted Gross Income Brackets</u>	<u>Tax Credits Per Exemption Attending:</u>	
	<u>K-12</u>	<u>Institute of Higher Education</u>
Under \$3,000	\$20	\$50
\$3,000 to 3,999	15	30
4,000 to 4,999	10	20
5,000 to 5,999	5	10
6,000 to 6,999	2	5

(c) The tax credits claimed by a resident taxpayer pursuant to this section shall be deductible from the taxpayer's individual net income tax liability, if any, for the tax year in which they are properly claimed, provided that a husband and wife filing separate returns for a taxable year for which a joint return could have been made by them shall claim only the tax credits to which they would have been entitled had a joint return been filed. In the event the tax credits claimed by a resident taxpayer, and allowed, exceed the amount of the income tax payments due from the resident taxpayer, the excess of credits over payments due shall be refunded to the resident taxpayer; provided that tax credits properly claimed by a resident individual who has no income tax liability, and allowed, shall be paid to the resident individual; and further provided that no refunds or payments on account of the tax credits allowed by this section shall be made for amounts less than \$1.

(d) Time for filing. Claims for tax credits under this section, including any amended claims thereof, must be filed on or before the end of the twelfth month following the close of the taxable year for which the

credit may be claimed. Failure to comply with the foregoing provisions shall constitute a waiver of the right to claim or recover the credits hereunder.

(e) The director of taxation shall prepare and prescribe the appropriate form or forms to be used by taxpayers in filing claims for tax credits hereunder. He may also require that the taxpayer furnish reasonable information in order that he may ascertain the validity of the claims for tax credits made pursuant to this section and promulgate any other rules and regulations as may be necessary to effectuate the purposes of this section pursuant to chapter 91.

(f) All of the provisions relating to assessments and refunds under this chapter and under section 231-23 (d) shall be made applicable hereto and shall apply with equal force to the tax credits hereunder.

...IDAHO...

...ILLINOIS...

Transportation--Pupils attending other than a public school

Chapter 122, Section 29-5. The school board of any school district that provides any school bus or conveyance for transporting pupils to and from the public schools shall afford transportation, without cost, for children who attend any school other than a public school, who reside at least  $1\frac{1}{2}$  miles from the school attended, and who reside on or along the highway constituting the regular route of such public school bus or conveyance, such transportation to extend from the homes of such children or from some point on the regular route nearest or most easily accessible to their homes to and from the school attended, or to or from a point on such regular route which is nearest or most easily accessible to the school attended by such children. The person in charge of any school other than

a public school shall certify on a form to be provided by the Superintendent of Public Instruction, the names and addresses of pupils transported and when such pupils were in attendance at the school. If any such children reside within  $1\frac{1}{2}$  miles from the school attended, the school board shall afford such transportation to such children on the same basis as it provides transportation for its own pupils residing within that distance from the school attended.

If a school district is required by this Section to afford transportation without cost for any child who is not a resident of the district, the school district providing such transportation is entitled to reimbursement from the school district in which the child resides for the cost of furnishing that transportation, including a reasonable allowance for depreciation on each vehicle so used. The school district where the child resides shall reimburse the district providing the transportation for such costs, by the 10th of each month or on such less frequent schedule as may be agreed to by the 2 school districts.

#### Community and School Lunch Programs and Free Lunch Programs

##### Chapter 122, Section 712.1. Definitions

For the purposes of this Act:

"School board" means school principal, directors, board of education and board of school inspectors of public and private schools.

"Welfare center" means an institution not otherwise receiving funds from any governmental agency, serving lunches to children of school age or under, in conformance with the authorized school lunch program.

"Free lunch program" means those programs through which school boards supply all of the needy children in their respective districts



with free school lunches.

"School lunch program" means the program whereby certain types of lunches called balanced, nutritious lunches adopted as standard types and designated by the Superintendent of Public Instruction, are furnished to students.

Shapter 122, Section 712.2. Reimbursement of sponsors

The Superintendent of Public Instruction is **authorized** to reimburse school boards, welfare centers, and other designated sponsors of school lunch programs for a portion of the costs of food served in balanced nutritious lunches, and served to students in schools operated not for profit, in non-profit public or parochial schools and non-profit welfare centers.

The Superintendent of Public Instruction shall reimburse the amount of actual cost not to exceed \$0.15 to School Boards for each free lunch supplied by them. This appropriation shall be in addition to any federal contributions for Free Lunch Programs.

Shared-time. Basis for Apportionment to Districts

Chapter 122, Section 18-8, 1. (a) Pupils regularly enrolled in a public school for only a part of the school day may be counted on the basis of 1/6 day for every class hour attended pursuant to such enrollment.

Driver Education Course

Chapter 122, Section 27-24.2. Any school district which maintains grades 9 through 12 shall offer a driver education course in any school which it operates. Both the classroom instruction part and the practice driving part of such driver education course shall be open to a resident or non-resident pupil attending a non-public school in the district wherein the

course is offered and to each resident of the district who acquires or holds a currently valid driver's license during the term of the course and who is at least 15 but has not reached 21 years of age without regard to whether any such person is enrolled in any other course offered in any school that the district operates. However, a student may be allowed to commence the classroom instruction part of such driver education course prior to reaching age 15 if such student then will be eligible to complete the entire course within 12 months after being allowed to commence such classroom instruction.

Such a driver education course may include classroom instruction on the safety rules and operation of motorcycles, or motor driven cycles.

Such a course may be commenced immediately after the completion of a prior course. Teachers of such courses shall meet the certification requirements of this Act and regulations of the Superintendent as to qualifications.

#### Chapter 122, Section 27-24.4. Making claim

The State shall reimburse each school district the per capita cost to the district, not to exceed the amount of \$40, for each pupil who finishes both the classroom instruction part and the practice driving part of a driver education course that meets the minimum requirements of this Act; provided that if reimbursement has previously been made on account of any student who finished the classroom instruction part only of such course as hereinafter provided, then the reimbursement on account of such student shall be the per capita cost to the district of the practice driving part of such course, not to exceed the amount of \$32. The State shall reimburse each school district the per capita cost to the district,

not to exceed the amount of \$8, for each pupil who finishes the classroom instruction part only of such driver education course. Such reimbursement is payable from the Drivers Education Fund in the State treasury. Should the sum appropriated from such fund be sufficient to pay all claims submitted each year the amount payable to each district shall be proportionately reduced. The school district which is the residence of a pupil who attends a non-public school in another district that has furnished the driver education course shall reimburse the district offering the course, the difference between the actual per capita cost of giving the course the previous school year and the amount reimbursed by the State. By April 1 the non-public school shall notify the district offering the course of the names and district members of the non-resident students desiring to take such course the next school year. The district offering such course shall notify the district of residence of those students affected by April 15. The school district furnishing the course may claim the non-resident pupil for the purpose of making a claim for State reimbursement under this Act.

...INDIANA...

### Transportation

Chapter 260, Section 901, Acts 1965. Where school children who are attending any parochial school in any school corporation of this state reside on or along the highway constituting the regular route of a public school bus, the governing body of such school corporation shall afford transportation, without extra charge, by means of such school bus, for the children attending any such parochial school, from their homes, or from some point on the regular route nearest or most easily accessible to their

homes, to such parochial school or to and from the point on such regular route which is nearest or most easily accessible to such parochial school.

Textbooks. Temporary aid for poor

Section 28-512. If any parent, guardian or other person having control or charge of any child subject to the provisions of this act does not have sufficient means to furnish such child with books, school supplies, and clothing necessary to the attendance upon school, then the school corporation wherein such child resides shall furnish temporary aid for such purpose, which aid shall be allowed and repaid to such school corporation by the township overseer of the poor, in the manner provided by law for the relief of the poor, upon presentation of an itemized statement of such temporary aid.

...IOWA...

Sharing Instructors and Services

Section 257.26. The state board, when necessary to realize the purposes of this chapter, shall approve:

1. The sharing of the services of a single instructor by two or more schools in two or more school districts;
2. The enrollment in public schools for specified courses of students who also are enrolled in private schools, when the courses in which they seek enrollment are not available to them in their private schools, provided such students have satisfactorily completed prerequisite courses, if any, or have otherwise shown equivalent competence through testing. Courses made available to students in this manner shall be considered as compliance by the private schools in which such students are enrolled with any standards or laws requiring such private schools to offer

or teach such courses.

The provisions of this section shall not deprive the respective boards of public school districts of any of their legal powers, statutory or otherwise, and in accepting such specially enrolled students, each of said boards shall prescribe the terms of such special enrollment, including but not limited to scheduling of such courses and the length of class periods. In addition, the board of the affected public school district shall be given notice by the state board of its decision to permit such special enrollment not later than six months prior to the opening of the affected public school district's school year, except that the board of the public school district may, in its discretion, waive such notice requirement.

Driver Education, Health, and Other Services  
Services to Nonpublic Schools

Chapter 1110, 63 G.A., Second Regular Session, Section 1. Section two hundred fifty-seven point twenty-six (257.26), Code 1966, is hereby amended by adding thereto the following: "School districts and county school systems may when available make special education services and materials enumerated in this chapter available to pupils attending non-public schools in the same manner and to the same extent that they are provided to public school students in the school district or county."

Approved April 29, 1970.

...KANSAS...

Transportation

Section 72-619. Transportation of pupils attending private or parochial schools.--Whenever the governing body of any school district provides

transportation in public school buses for pupils attending the public schools under the provisions of this act or sections 72-701 and 72-702 of the General Statutes Supplement of 1945, or section 72-2517a of the General Statutes of 1935, and acts amendatory thereof and supplemental thereto, or either of them, pupils residing in such school district attending private or parochial schools of elementary and high school grades which are approved by the state board of education, who shall reside on or along the highway or street constituting the regular route of a public school bus or conveyance or who shall gather at some place on the regular route nearest or most easily accessible to their homes or such schools, where such transportation is provided for pupils attending the public schools, shall be entitled to the privilege of such school-bus transportation upon such regular route as arranged for the benefit of pupils attending public schools.

#### Health Services      Hearing Testing

Section 72-1204. Hearing testing programs; definitions. As used in this act: (a) "School board" means the board of education of any school district or the governing authority of any non-public accredited school.

(b) "School" means all elementary and secondary schools accredited by the state board of education.

(c) "Basic hearing screening" means a hearing testing program for each child conducted with a calibrated audiometer.

Section 72-1205. Same; free tests; who performs tests; reports to parents. Each school board shall provide basic hearing screening without charge to every pupil in its schools during the first year of admission and not less than once every three (3) years thereafter. All tests shall be performed

by a person competent in the use of a calibrated audiometer and who has been designated by the school board. The results of the test and, if necessary, the desirability of examinations by a qualified physician shall be reported to the parents or guardians of such pupils.

...KENTUCKY...

### Transportation

Section 158.115. Conduct of Schools. Supplementation of school bus transportation system by county out of general funds.--Each county may furnish transportation from its general funds, and not out of funds or taxes raised or levied for educational purposes or appropriated in aid of the common schools, to supplement the present school bus transportation system for the aid and benefit of all pupils of elementary grade attending school in compliance with the compulsory school attendance laws of the Commonwealth of Kentucky who do not reside within reasonable walking distance of the school they attend and where there are no sidewalks along the highway they are compelled to travel; and any county may provide transportation from its general funds to supplement the present school bus transportation system for the aid of any pupil of any grade who does not live within reasonable walking distance of the school attended by him in compliance with the compulsory school attendance laws and where there are no sidewalks along the highway he is compelled to travel.

Shared-time. Common school defined; who may attend; age of entrance.

Section 158.030. A "common school" is an elementary or secondary school of the state supported in whole or in part by public taxation. No school shall be deemed a "common school" or receive support from public taxation unless the school is taught by a qualified teacher for a term of eight or

more months during the school year and every child residing in the district who is six years of age and over has had the privilege of attending it. Provided, however, that any child who is six years of age or who may become six years of age by December 31 following the opening of school may enter school provided that he enters within thirty calendar days of the beginning of that school year, with the exception that in schools having mid-year promotions any child who is six years of age or who may become six years of age within thirty calendar days after the opening of the second semester may enter school at the beginning of that semester. Any child who becomes six years of age later than December 31 following the opening of the school year shall not enter school during that year and in schools having mid-year promotions any child who becomes six years of age later than thirty days after the opening of the second semester shall not enter school during that semester.

Section 159.030. Exemptions from compulsory attendance. (1) The board of education of the district in which the child resides shall exempt from the requirement of attendance upon a regular public day school every child of compulsory school age:

- (a) Who is a graduate from an accredited or an approved four-year high school; or
- (b) Who is enrolled and in regular attendance in a private or parochial regular day school approved by the State Board of Education; or
- (c) Whose physical or mental condition prevents or renders inadvisable attendance at school or application to study; or
- (d) Who is deaf or blind to an extent that renders him incapable of receiving instruction in the regular elementary or secondary schools,



but whose mental condition permits application to study.

(2) Before granting an exemption under paragraph (c) of subsection (1) of this section the board of education shall require satisfactory evidence, in the form of a signed statement of a licensed physician or public health officer, that the condition of the child prevents or renders inadvisable attendance at school or application to study. On the basis of such evidence the board may exclude any such child from school.

...LOUISIANA...

#### Purchase of Services

Act 223, Laws of Louisiana. Providing for the purchase by the State of Louisiana of secular educational services from teachers employed by non-public schools and establishing procedures by which the State Superintendent of Public Education shall execute and regulate contracts for such purchases.

Be it enacted by the Legislature of Louisiana:

Section 1. Short Title: This act may be referred to as the "Louisiana Secular Educational Services Act."

Section 2. Findings of Fact, Declaration of Necessity, and Statement of Public Policy. It is hereby determined and declared as a matter of legislative finding:

(a) A clear and present crisis exists in the State of Louisiana with respect to the education of children in elementary and secondary schools.

(b) This crisis is the result of unprecedented rising costs in all areas of operation, and unprecedented demand for improvement in the quality

and calibre of education and opportunities for education available for Louisiana children, including those who are being educated in nonpublic schools;

(c) Certain of the financial aspects of this crisis in education in nonpublic schools are the direct result of state and local government taxation to support pay increases for public school teachers, and to defray costs of improved public school facilities; nonpublic schools have been reduced to a noncompetitive position for the employment of qualified teachers of secular educational subjects;

(d) In some of its aspects the crisis in education is national in scope, e.g., the demand for excellence in all programs of instruction, for the creation and implementaion (sic) of innovative methods and techniques of teaching, and for improvement of teacher salary schedules to assure a high level of quality within the teacher corps itself;

(e) That the State of Louisiana recognizes the fact that its literacy rate is among the lowest in the nation and that only through continued concentrated efforts on the part of the Legislature and educators can the educational level be raised;

(f) That the elementary and secondary education of children is today recognized as a public welfare purpose; that nonpublic education, through providing instruction in secular subjects, makes an important contribution to the achieving of such public welfare purpose; that the governmental duty to support the achieving of public welfare purposes in education may in part be fulfilled through governmental contracts for secular educational services provided by teachers in nonpublic schools.

(g) Attendance of children at nonpublic schools constitutes compliance with the Louisiana Compulsory School Attendance law; and that non-

public education in the State of Louisiana today, as during past years, bears the burden of educating 15 percent of all elementary and secondary school pupils in Louisiana, thus making a significant educational and economic contribution to education in the state;

(h) It is in the public interest that all Louisiana children receive the best education its citizens can provide; that the State of Louisiana has the right, the responsibility, the duty and the obligation, in order to accomplish the objective of quality education for Louisiana children, to provide financial assistance to qualified teachers of secular subjects in nonpublic schools, by the purchase of their secular educational services.

Section 3. Definitions. The following terms, whenever used or referred to in this Act, shall have the following meaning and interpretation:

(a) "Nonpublic School Teacher" means any person employed by an approved nonpublic school, as defined herein, for the teaching of secular subjects in such school.

(b) "Approved Nonpublic School" means

(1) Any non-profit elementary or secondary school within the State of Louisiana or which may hereafter be established within the state of Louisiana, offering education to the children of this State in any grades one through twelve, wherein a pupil may fulfill the requirements of the Compulsory School Attendance Law;

(2) which is supported predominately from funds or property derived from non-governmental sources; and

(3) No teacher shall be denied the benefits of this Act because of his or her race, creed, religion or national origin and no teacher

shall be denied the benefits of this Act because of the race, creed, religion or national origin of the children he or she teaches.

(c) "Purchase of Secular Educational Services" means the purchase by the Department of Education, from a school teacher, of services in teaching secular subjects to children enrolled in approved nonpublic schools. Payments shall be made directly to the teacher and such payments shall not exceed the State scale paid to teachers in the public school system.

(d) "Secular Subject" means any course of study in the curricula of the public schools, and shall include, but not necessarily be limited to, the teaching of mathematics, language arts, general and physical sciences, physical education, art and music, crafts and trades, home economics, or any other course of study in the curricula of the public schools, other than those involving the teaching of religious beliefs or any form of worship of any sect or religion.

Section 4. The State Superintendent of Public Education shall administer this Act and shall:

(a) Make contracts for the purchase of secular educational services directly with teachers of secular subjects;

(b) Establish appropriate rules and regulations for the approval of schools and school teachers hereunder, including such regulations as may be necessary for a determination that this Act is being lawfully and properly administered;

(c) Prescribe forms and establish procedures to enable nonpublic school teachers in the State of Louisiana to make application and contract for the sale of secular educational services.

Section 5. There is hereby created the "Secular Educational

Services Fund," which shall be administered by and under the control of the Superintendent of Public Education. All expenses and disbursements in connection with the administration and implementation of this Act shall be made exclusively from said fund. No state funds dedicated to the support of the public schools of Louisiana shall form a part of the "Secular Educational Services Fund" or in any way be used in the implementation of this Act.

In the event that, in any fiscal year, the total revenues paid into the "Secular Educational Services Fund" shall be insufficient to pay the total amount of approved teacher contracts under this Act, such contracts shall be paid in an amount equal to the proportion which the total amount of such contracts bears to the total amount of monies available in said Fund.

This Act shall not be implemented by appropriation or otherwise until on and after the date on which the pay schedule for public school teachers under Act 397 of 1968 is implemented.

Section 6. If any provision or item of this Act is held invalid, such invalidity shall not affect other provisions of this Act which can be given effect without the invalid provisions.

Section 7. All laws or parts of laws in conflict with any of the provisions of this Act are hereby expressly repealed.

#### Textbooks

Section 17-351. Severance tax fund--Dedication for school books and supplies.--The severance tax fund of the state shall be devoted after allowing funds and appropriations as provided by the constitution, first, to supplying school books, and second, to supplying school supplies, such as library books, pencils, pencil paper, ink paper, pens, ink, and the like

to the school children of the State of Louisiana. Thereafter any further sums as remain in the said severance tax fund shall be disposed of in accordance with the constitution and laws of the state.

Section 17-352. Distribution of books and supplies free of cost.--The state board of education shall distribute these school books and school supplies for school children free of cost to such children.

#### Transportation

Section 17-158. School buses for transportation of children; employment of bus operators.--Parish school boards may provide transportation for children attending any school of suitable grade approved by the state board of education and living more than one mile from such school; and for that purpose parish school boards may employ school bus operators as hereinafter defined in R.S. 17:491.

#### Free Lunches for School Children

Section 17-191. Terms defined. As used in this Sub-part:

- (1) "School board" means any parish or city school board.
- (2) "School" means any school wherein children between the ages of 5 and 17, both inclusive, are in attendance.
- (3) "School lunch program" means a program under which lunches are served by any school in this state on a non-profit basis to children in attendance, including any such program under which a school receives assistance out of the funds appropriated by the Congress of the United States.

Section 17-195. Operation of lunch program; general powers of school boards; forbidden acts; penalties. The school boards, in order to provide

for the operation of school lunch programs in schools under their jurisdiction, may enter into contracts with respect to food, services, supplies, equipment, and facilities for the operation of such programs and may use therefor funds disbursed to them under the provisions of this Subpart any federal funds, commodities, gifts, and any other funds that may be received for school lunches under this program. Each parish school board and the principal of each school shall post in a prominent place the cost of the lunches and all persons partaking of such lunches who are able to pay for the same shall pay directly to the sponsor the cost thus posted. No student shall be requested to pay more than the actual cost of the lunch, less the amount of reimbursement paid to the sponsor from state and federal funds. No discrimination against any child shall be made by the sponsor because of his inability to pay, nor shall the sponsor publish or permit to be published the names of any children unable to pay for the lunch. Whoever publishes or permits the publication of the name of any child unable to pay for such lunch shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than one hundred dollars, or imprisoned for not more than ninety days or both.

State funds reimbursed to school boards shall be used for the purchase of food only. Provided, that any surplus of funds, after the payment for food purchased, may be used for preparation or serving the school lunches. School boards shall be required to purchase food wholesale at the lowest prices quoted for good quality products or at prices no greater than the wholesale rate for the same item.

...MAINE...

Transportation

Section 5104. Schools and Libraries. A municipality may raise or appropriate money:

1. Public schools. Providing for public schools and libraries.
2. Bands. Providing for school bands and other organized activities conducted under the supervision of the superintending school committee.
3. Physical education. Providing for physical fitness programs in the schools.
4. Maintenance. Providing for the construction, repairs and maintenance of buildings and equipment for educational institutions with which a municipality has a contract as provided in Title 20, section 1289.
5. Transportation. Providing for the transportation of school children to and from schools other than public schools, except such schools as are operated for profit in whole or in part, subject to the following conditions:
  - A. Such sums shall not be considered in computing the net foundation program allowance on which state subsidy is computed under Title 20, section 3722. This paragraph shall not apply to an administrative unit which transports children to a school pursuant to Title 20, sections 1289 and 1291.
  - B. The superintendent of schools in each municipality that conveys such school children shall annually on or before April 1st make a return to the Commissioner of Education, showing the number of school children conveyed to and from schools other than public schools in such manner as the commissioner may require. Any municipality which fails to make the return shall be subject to Title 20, section 854. The commissioner shall compute the school children transportation costs in the net foundation



program by deducting from the total school children transportation cost that percentage that the number of school children being transported to schools other than public schools bears to the total number of school children being transported by the municipality.

C. This subsection shall not be effective in any city until a majority of the legal voters, present and voting, at any regular election so vote, and shall not be effective in any town until an article in a town warrant so providing shall have been adopted at an annual town meeting. The question in appropriate terms may be submitted to the voters at any regular city election by the municipal officers thereof and shall be so submitted upon petition of at least 20% of the number of voters voting for the gubernatorial candidates at the last state-wide election in that municipality. Such petition shall be filed with the municipal officers at least 30 days before such regular election. When a municipality has voted in favor of adopting this subsection, said subsection shall remain in effect until repealed in the same manner as provided for its adoption.

...MARYLAND...

### Transportation

Thirteen of the 24 school systems in Maryland have enabling legislation which allows local governments to make some public money available for the transportation of parochial school children.

Anne Arundel County, Laws of Maryland 1963, Chapter 854. All children who attend any parochial schools in the county, which schools do not receive state aid, and who reside on or along or near to the public highways of the county, on which there is now or hereafter operated a public

school bus or conveyance provided by the board of education of the county for transporting children to and from the public schools of the county, shall be entitled to transportation on such buses or conveyances as now are or may be hereafter established, operated or provided by the board of education of the county for transporting children to and from the public schools of the county; and the same shall be provided for them by the board of education of the county, subject to the conditions hereinafter set forth, from a point on the public highways nearest to or most accessible to their respective homes to a point on the public highways nearest or most accessible to their respective schools, without changing the routes of the buses or conveyances now or hereafter established by the board of education of the county for transporting children to and from the public schools and such transportation shall be provided by the board of education, as aforesaid, for all the children attending schools described herein, upon the same terms and conditions as now are or as may be hereafter established by the board of education of the county for children now attending public schools. Whenever there are children attending schools, which schools do not receive state aid, except such schools as are operated for profit in whole or in part, the board of education of the county shall make rules and contracts for the transportation of such children to and from such schools; provided, however, that the transportation benefits accorded children under this section shall be governed by the same rules and standards applicable to and shall be neither more nor less than the transportation benefits accorded public school students by the board of education of the county.

Enabling legislation for the other 12 counties use essentially the

same language as the law for Anne Arundel County. The other counties and their codes follow:

Allegany County--Laws of Maryland 1933, chapter 399

Baltimore County--Laws of Maryland 1961, chapter 525

Calvert County--Laws of Maryland, extra session 1948, chapter 11

Cecil County--Laws of Maryland 1957, chapter 70

Charles County--Laws of Maryland 1947, chapter 918, section 241A

Harford County--Laws of Maryland 1955, chapter 112

Howard County--Laws of Maryland 1943, chapter 648, section 291A

Montgomery County--1945 Laws of Maryland, chapter 977

Prince George's County--Laws of Maryland 1947, chapter 910

St. Mary's County--Laws of Maryland 1941, chapter 609, section 202

Talbot County--Laws of Maryland 1955, chapter 403

Washington County--Laws of Maryland 1970, article 77, section 146A

...MASSACHUSETTS...

### Transportation

Chapter 76, section 1. School attendance regulated.--Pupils who, in the fulfillment of the compulsory attendance requirements of this section, attend private schools of elementary and high school grades so approved shall be entitled to the same rights and privileges as to transportation to and from school as are provided by law for pupils of public schools and shall not be denied such transportation because their attendance is in a school which is conducted under religious auspices or includes religious instruction in its curriculum.

...MICHIGAN...

Purchase of Services

Public and Local Acts Michigan 1970, Act 100. Chapter 2. Section 55.

As used in this chapter:

(a) "Superintendent" means the state superintendent of public instruction or any successor to the powers, duties and functions of that office.

(b) "Certified lay teacher" means a teacher who holds a valid certificate or permit issued by the state to teach in the public schools of this state and is not a member of a religious order, who by vow or promise has chosen the religious life of poverty as a vocation or who wears any distinctive habit, or both.

(c) "Eligible Unit" means a board of education, association or corporation operating a nonpublic school or system of nonpublic schools, which is complying with all educational standards as required by law, has filed with the state department of education a certificate that it complies with section 2 of article 8 of the state constitution and title VI of the civil rights act of 1964 (Public Law 88-352) in effect on December 1, 1969, has applied on a form provided by the superintendent for aid provided by this chapter for the fiscal year 1970-71 by August 15, 1970 and for each succeeding fiscal year by October 1 prior to the beginning of the fiscal year for which such aid is sought and is certified by the superintendent as having substantially complied with all state laws concerning evaluation of pupils and other laws applicable to nonpublic schools. If an application is not made it shall be conclusive evidence that an eligible unit does not desire to participate in the provisions of this chapter for that year.

(d) "Secular subjects" means those courses of instruction commonly

taught in the public schools of this state including but not limited to language skills, mathematics, science, geography, economics, history, as defined by the state department of education, which shall expressly not include any course of instruction in religious or denominational tenets, doctrine or worship or the primary purpose of which is to inculcate such tenets, doctrine or worship. Textbooks used in such secular subjects shall meet the same criteria as required of textbooks used in the public schools.

Section 56. The legislature finds that large numbers of children are being educated in nonpublic elementary and high schools in this state and further finds that increasing costs of education are impairing the quality of secular education of children enrolled in nonpublic schools lawfully selected by their parents. These schools perform, in addition to their sectarian function, the task of secular education. The legislature declares as public policy of the state that the public good and general welfare require that state appropriations now provided to public school districts under this act for the purpose of furnishing opportunities for public school children to secure a quality secular education be extended to assist in providing opportunities for quality secular education to children attending nonpublic elementary and high schools, as part of a general program to foster and encourage knowledge so as to provide a mature citizenry capable of contributing to good government, and to the safety and the economic and civil well-being of all the people of this state.

Section 57. A sum necessary to fulfill the requirements of this chapter is appropriated from the general fund to the department of education for

the fiscal year ending June 30, 1971, and for each fiscal year thereafter.

Section 58. The sum so appropriated shall not exceed 2% of the total expenditures from state and local sources for the support of the free public elementary and secondary public education system in this state in the last preceding fiscal year, as determined or estimated when necessary, by the superintendent from records available to him and financial accounting records of public school units maintained in accordance with rules promulgated by the state department of education. For the purpose of such limitation, total expenditures shall not include the amounts expended for bus transportation and auxiliary services for public and nonpublic school students. This appropriation shall not exceed \$22,000,000.00 during the 1970-71 school year beginning July 1, 1970.

Section 59. The sum so appropriated shall be used by the department of education to purchase from eligible units educational services in secular subjects for the benefit of pupils attending eligible units.

Section 60. Within the limit of the appropriation under this chapter for a particular fiscal year, the superintendent shall pay to an eligible unit, in quarterly installments, a sum not to exceed in the fiscal years 1970-71 and 1971-72, 50% of the salaries of certified lay teachers within such unit teaching secular subjects and in the fiscal years thereafter 75% of such salaries. If the state board of education determines that if the total actual costs of such educational service rendered by such individual is in excess of the total actual cost of comparable educational service rendered in approximately like circumstances of geographical area and economic condition in the public schools, the state board of education

shall disapprove the total actual cost of such educational service rendered by such individual and no further payment shall be made to such individual until the state board of education makes a redetermination that the total actual cost for such educational service does not exceed the total actual cost of comparable educational service in such public schools. When a statewide budget system becomes operational, the amounts paid for such salaries shall not exceed 75% of the salary allowances adopted by the legislature for the purpose of determining such allowances for comparable professionals in local school district budgets in a particular fiscal year.

Section 61. Prior to the first day of the quarter for which payments are due, an eligible unit shall certify to the superintendent on a form prepared by him, a list of certified lay teachers teaching secular subjects employed by such unit, the salaries and certification of each. Where the superintendent finds that a certified lay teacher is providing less than a full schedule of instruction in secular subjects, he shall allocate that part of the salary due such teacher for such instruction in secular subjects and shall prepare a voucher for payment to the eligible unit for the allocated portion of the salary of such teacher as provided in section 60. The superintendent shall prepare appropriate vouchers and the state treasurer shall pay to the eligible units the aggregate allowance for the salaries for the teachers employed by the unit.

Section 62. As an express condition of continued certification, the eligible units shall maintain such accounting systems as will enable the department at all times to ascertain that the allowances by the state were in fact used to pay the certified lay teachers teaching secular subjects and not for any other purpose.

Section 63. This chapter shall be administered by the department of education which shall promulgate rules to carry out the provisions of this chapter in accordance with and subject to the provisions of Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.313 of the Compiled Laws of 1948.

Section 64. Prior to the beginning of each fiscal year the superintendent shall prepare a list of eligible units. Anyone aggrieved by not having been declared an eligible unit may proceed as in a contested case within the meaning of Act No. 306 of the Public Acts of 1969 to have his status determined.

Section 65. It is understood that certified lay teachers who receive payment under this chapter are not employees of the state and therefore are not eligible for membership in any public school employee retirement system under the provisions of Act No. 136 of the Public Acts of 1945, as amended, being sections 38.357 of the Compiled Laws of 1948 nor shall they be under the provisions of Act No. 4 of the Public Acts of the Extra Session of 1937, as amended, being sections 38.71 to 38.191 of the Compiled Laws of 1948, nor subject to the provisions of Act No. 336 of the Public Acts of 1947, as amended, being sections 423.201 to 423.216 of the Compiled Laws of 1948.

Section 66. (1) If any portion of this act or the application thereof to any person or circumstances shall be found invalid by a court, such invalidity shall not affect the remaining portions or application of this act which can be given effect without the invalid portion or application if the court so indicates.



(2) It is the intent of the legislature that an advisory opinion upon the constitutionality of chapter 2 of this amendatory act be sought pursuant to article 3, section 8, of the state constitution from the supreme court, after it has been enacted into law but before its effective date.

Section 66a. The provisions of this chapter shall take effect September 1, 1970, except that it is the intent of the legislature that no expenditures of state funds be made pursuant to the provisions of chapter 2 until the Michigan supreme court renders such advisory opinion.

Transportation--General powers and duties of districts

Section 15.3366. Sectarian schools not to receive primary money: Transportation of pupils to and from private or parochial schools.--No school district shall apply any of the moneys received by it from the primary school interest fund or from any and all other sources for the support and maintenance of any school of sectarian character, whether the same be under the control of any religious society or made sectarian by the board. The provisions of this section shall not be construed to prohibit the transportation to and from school of pupils attending private or parochial schools as provided in sections 591 and 592 (sections 15.3591 and 15.3592) of this act.

Section 15.3590 (1). Transportation of pupils to public or state approved nonpublic schools.--Any school district transporting or paying for transportation of any of its resident pupils, except mentally and physically handicapped children under section 774 of this act, or children enrolled in special education classes, shall transport or pay for the transportation of every resident child in the elementary and high school grades

for whom the school district is eligible to receive an allotment from the school aid fund for transportation pursuant to section 11 of Act 312 of the Public Acts of 1957, as amended, attending either the public or the nearest state approved nonpublic school available to which nonpublic school the child is eligible to be admitted, in the school district, without charge to the resident child, his parents, guardian or person standing in loco parentis to the child. No school district shall be required to transport or pay for transportation of any resident child living within  $1\frac{1}{2}$  miles, by nearest traveled route, to the public or state approved nonpublic school in which he is enrolled. No school district shall be required to transport or pay for the transportation of any resident child attending a nonpublic school who lives in an area less than  $1\frac{1}{2}$  miles from a public school in which public school children are not transported, except that the school district shall be required to transport or pay for the transportation of such resident child from the public school within such area to the nonpublic school he attends. The state approved nonpublic school is defined as one complying with the provisions of Act No. 302 of the Public Acts of 1921, being sections 388.551 to 388.558 of the Compiled Laws of 1948.

Section 15.3590 (2). Same; payment for transportation by district.--No school district shall be required to transport or pay for the transportation of resident children to state approved nonpublic schools located outside the district unless the school district transports any of its resident children, other than mentally and physically handicapped children under section 774 of this act or children enrolled in special education classes, to public school located outside the district, in which case the

school district shall transport or pay for the transportation of resident children attending a state approved nonpublic school at least to the distance of the public schools located outside the district to which the district transports resident children and in the same general direction.

Section 15.3591. Same; contracts for transportation.--The board of any school district may enter into a contract with any other district or with private individuals to furnish transportation for nonresident pupils attending public and state approved nonpublic schools located within such district or in other districts. In no event may the price paid for such transportation be less than the actual cost thereof to the district furnishing the same.

Section 15.3592. Same; regular routes, days of transportation, classes of pupils.--Children attending public and the nearest state approved nonpublic school available, to which nonpublic school the child may be admitted, shall be transported along the regular routes as determined by the board of education to public and state approved nonpublic schools. Transportation to public and the nearest state approved nonpublic school located within or outside the district to which nonpublic school the child is eligible to be admitted shall be provided in accordance with rules and regulations promulgated by the superintendent of public instruction, which rules shall not require the transportation or payment for transportation for nonpublic school children on days when public school children are not transported. Nothing contained in this act shall be construed to require or permit transportation of pupils to a state approved nonpublic school attending in the elementary grades where such transportation is furnished by the district for high school pupils only, nor to require or permit the

transportation of pupils to a state approved nonpublic school attending the high school grades where such transportation is furnished by the district for elementary pupils only. All vehicles used for transportation of children shall be adequate and of ample capacity.

Religious instruction classes off public school property. Released When Section 340.732 (g). Any child who is regularly enrolled in the public schools while in attendance at religious instruction classes for not more than two class hours per week, off public school property during public school hours upon written request of the parent, guardian or person in loco parentis in accordance with rules and regulations prescribed by the superintendent of public instruction.

Driver education and training; apportionment of fund

Act 1 of Public Acts of First Extra Session of 1955. (c) From the money credited to the driver education and training fund, the sum of \$20,000.00 shall be apportioned annually to the state superintendent of public instruction for state administration of the program. The remainder of the fund shall be distributed to local public school districts on the basis of \$25.00 per qualified enrollment in driver education training courses conducted for children enrolled in the high school grades of public, parochial or private schools: Provided, That if the amount available in the driver education and training fund is insufficient to allow the maximum payment, then payment to local public school districts shall be prorated on the basis of total membership in all driver education training classes conducted in the state. Such courses must be conducted by the local public school district, but enrollment shall be open to high school students who are enrolled in private or parochial schools in the

public school district. Reimbursement to local school districts shall be made on the basis of an application made by the local school district superintendent to the state superintendent of public instruction.

#### Health Services

Act 341 of Public Acts of 1965. AN ACT to protect the public health of school children by providing health examinations and services on an equal basis to children attending public and non-public elementary and secondary schools.

Section 325.511 Health examinations and services; children in public and nonpublic schools; exceptions.

Section 1. Whenever the health department or health board of any township, village, city, county, district or the state provides any examination or health services to school children in attendance in the elementary and secondary grades in the public schools in the township, village, city, county, district or the state, it shall provide such examinations and health services on an equal basis to school children in attendance in the elementary and secondary grades in both public and non-public schools in the township, village, city, county, district or the state. A health officer or member of his staff shall not give any such examination or health service to any child whose parents or guardians have religious objection to such examination or health service. The state health commissioner shall enforce the provisions of this act.

This act is ordered to take immediate effect. Approved July 23, 1965.

#### Auxiliary services

Act 343 of Public Acts of 1965. AN ACT to amend Act No. 269 of the Public

Acts of 1955, entitled "An act to provide a system of public instruction and primary schools; to provide for the classification, organization, regulation and maintenance of schools and school districts; to prescribe their rights, powers, duties and privileges; to provide for registration of school districts, and to prescribe powers and duties with respect thereto; to provide for and prescribe the powers and duties of certain boards and officials; to prescribe penalties; and to repeal certain acts and parts of acts," as amended, being sections 340.1 to 340.984 of the Compiled Laws of 1948, by adding a new section 622.

Section 1. Act No. 269 of the Public Acts of 1955, as amended, being sections 340.1 to 340.984 of the Compiled Laws of 1948, is hereby amended by adding a new section 622 to read as follows:

Section 340.622. Auxiliary services for children; use of state funds; rules and regulations.

Section 622. Whenever the board of education of a school district provides any of the auxiliary services specified in this section to any of its resident children in attendance in the elementary and high school grades, it shall provide the same auxiliary services on an equal basis to school children in attendance in the elementary and high school grades at non-public schools. The board of education may use state school aid funds of the district to pay for such auxiliary services. Such auxiliary services shall include health and nursing services and examinations; street crossing guards services; national defense education act testing services; speech correction services; visiting teacher services for delinquent and disturbed children; school diagnostician services for all mentally handicapped children; teacher counsellor services for physically

handicapped children; teacher consultant services for mentally handicapped or emotionally disturbed children; remedial reading; and such other services as may be determined by the legislature. Such auxiliary services shall be provided in accordance with rules and regulations promulgated by the state board of education in accordance with Act No. 88 of the Public Acts of 1943, as amended, being sections 24.71 to 24.80 of the Compiled Laws of 1948, and subject to Act No. 197 of the Public Acts of 1952, as amended, being sections 24.101 to 24.110 of the Compiled Laws of 1948.

#### Shared-time

Act 312 of Public Acts of 1957. Section 388.623. Elementary tuition pupil; high school tuition pupil, date for charging tuition.

Section 13. (a) An "elementary tuition pupil" is a child of school age attending school in grades kindergarten to sixth, inclusive, in a district other than of his residence and whose tuition is paid by the school board of the district of his residence: Provided, That if the district in which such child is in attendance does not operate grades above the eighth, elementary tuition pupils as herein defined shall also include pupils enrolled in the seventh and eighth grades.

(b) A "high school tuition pupil" is a child of school age attending school in grades seventh and eighth in a district other than that of his residence and in which grades above the eighth are being maintained, and in grades ninth to twelfth, inclusive, in a district other than that of his residence and whose tuition is paid by the school board of the district of his residence.

(c) Every school district having tuition pupils in membership on the fourth Friday following Labor day of each year, shall charge the school district, in which such tuition pupil resides, tuition in at least the

amount of the differences between the per capita cost as determined in section 14 and the per pupil membership allowance provided in sections 8 and 10. Except that in the case of nonresident pupils in part time membership, an additional allowance for such child shall be made to the school district in an amount equal to the difference between the prorated per capita cost as determined in section 14 and the prorated per pupil membership allowance as provided in sections 8 and 10.

...MINNESOTA...

#### Transportation of School Children

##### Section 123.76. Policy.

In districts where the state provides aids for transportation it is in the public interest to provide equality of treatment in transporting school children of the state who are required to attend elementary and secondary schools pursuant to Minnesota Statutes, Chapter 120, so that the health, welfare and safety of such children, while using the public highways of the state, shall be protected.

School children attending any schools, complying with Minnesota Statutes, Section 120.10, Subdivision 2, are therefore entitled to the same rights and privileges relating to transportation.

##### Section 123.77. Definitions

Subdivision 1. The following words and terms in sections 123.76 to 123.79 shall have the following meanings ascribed to them.

Subdivision 2. "District" means any school district or unorganized territory as defined in Minnesota Statutes, Section 120.02.

Subdivision 3. "School" means any school as defined in Minnesota Statutes, Section 120.10, Subdivision 2.



Subdivision 4. "School board" means the governing body of any school district or unorganized territory.

Subdivision 5. "School children" means any student or child attending or required to attend any school as provided in the Education Code, Minnesota Statutes, Chapters 120 to 129.

Section 123.78. Equal treatment.

Subdivision 1. The school board of any district which is now or hereafter eligible to receive state aid for transportation under Minnesota Statutes, Chapters 123 and 124, shall provide equal transportation within the district for all school children to any school when transportation is deemed necessary by any board by reason of distance or traffic condition in like manner and form as provided in Minnesota Statutes, Sections 123.16, Subdivisions 3 and 4; 123.18; 123.39; 124.22; and 124.51, Subdivision 5, when applicable.

Subdivision 2. When transportation is provided, the scheduling of routes, manner and method of transportation, control and discipline of school children and any other matter relating thereto shall be within the sole discretion, control and management of the school board.

Section 123.79. Funds and aids

Subdivision 1. Such state aids as may become available or appropriated shall be governed by Minnesota Statutes, Section 124.22, be paid to the school district entitled thereto for the equal benefit of all school children, and disbursed in such manner as determined by the board.

Subdivision 2. The board of any district may expend any monies in its treasury, whether received from state or any other source for the purpose of providing equal transportation treatment of all school children attending school.

Shared-time

## Section 124.17. Definition of pupil units.

Subdivision 1. A pupil unit is the denominator used to compute the distribution of state aid. Pupil units for each resident pupil in average daily attendance shall be counted as follows:

(1) In an elementary school, for kindergarten pupils attending half-day sessions throughout the school year, one-half pupil unit and other elementary pupils, one pupil unit.

(2) In secondary schools, pupils in junior high school or a six-year high school and all other pupils in secondary schools, one and one-half pupil units.

(3) In area vocational-technical schools one and one-half pupil units.

Subdivision 2. Average daily attendance means the quotient to be obtained by dividing the number which represents the total of all days which all pupils attend school during the school year by the number of days during the school year while the school is in session.

Driver Education

## Section 171.04. Persons not eligible for driver's licenses.

The department shall not issue a driver's license hereunder:

(1) To any person who is under the age of 16 years; nor, after January 1, 1967, to any person under 18 years unless such person shall have successfully completed a course in driver education, including both classroom and behind-the-wheel instruction, approved by the department of public safety or, in the case of a course offered by a private, commercial driver education school or institute employing driver education instructors,

by the department of public safety, except when such person has completed a course of driver education in another state or has a previously issued valid license from another state or country; nor to any person under 18 years unless the application of license is approved by either parent when both reside in the same household as the minor applicant, otherwise the parent having custody or with whom the minor is living in the event there is no court order for custody, or guardian having the custody of such minor, or in the event a person under the age of 18 has no living father, mother or guardian, the license shall not be issued to such person unless his application therefor is approved by his employer. Behind-the-wheel driver education courses offered in any public school shall be open for enrollment to persons between the ages of 15 and 18 years residing in the school district or attending school therein. Any public school offering behind-the wheel driver education courses may charge an enrollment fee for the behind-the-wheel driver education course which shall not exceed the actual cost thereof to the public school and the school district. The approval required herein shall contain a verification of the age of the applicant;

(2) To any person whose license has been suspended during the period of suspension except that a suspended license may be reinstated during the period of suspension upon the licensee furnishing proof of financial responsibility in the same manner as provided in the safety responsibility act;

(3) To any person whose license has been revoked except upon furnishing proof of financial responsibility in the same manner as provided in the safety responsibility act and if otherwise qualified;

(4) To any person who is an habitual drunkard as determined by competent authority or is addicted to the use of narcotic drugs;

(5) To any person who has been adjudged legally incompetent by reason of mental illness, mental deficiency, or inebriation, and has not been restored to capacity, unless the department is satisfied that such person is competent to operate a motor vehicle with safety to persons or property;

(6) To any person who is required by this chapter to take an examination, unless such person shall have successfully passed such examination;

(7) To any person who is required under the provisions of the safety responsibility laws of this state to deposit proof of financial responsibility and who has not deposited such proof;

(8) To any person when the commissioner has good cause to believe that the operation of a motor vehicle on the highways by such person would be inimical to public safety or welfare;

(9) To any person when, in the opinion of the commissioner, such person is afflicted with or suffering from such physical or mental disability or disease as will affect such person in a manner to prevent him from exercising reasonable and ordinary control over a motor vehicle while operating the same upon the highways; nor to a person who is unable to read and understand official signs regulating, warning, and directing traffic.

...MISSISSIPPI...

### Student Loans

Chapter 27, General Laws of Mississippi 1969, Extraordinary Session.

AN ACT to promote the welfare of the State of Mississippi; to promote the secular education of children of the State of Mississippi

attending nonpublic schools; to encourage citizens to remain in the State of Mississippi; to promote (sic) education and training of teachers for Mississippi educational systems; to provide for loans to students attending approved nonfree and nonpublic schools; authorizing and directing the State Educational Finance Commission to administer this act and to establish such rules and regulations as are necessary; to establish and provide a revolving fund for the purposes of this act; to provide for the eligibility of applicants for said loans; and for other related purposes.

Section 1. Administration of act by commission. The terms and provisions of this act shall be administered and executed by the State Educational Finance Commission created by House Bill No. 2, Chapter 11, Extraordinary Session of 1953, Section 6246-01, et seq., and for the purpose of this act the term "Commission" shall mean "State Educational Finance Commission" except where the context clearly indicates otherwise.

Section 2. Legislative declaration. It is hereby determined and declared that the State reaffirm its commitment and dedication to public school education; that nothing herein contained be construed in any manner whatever to be an abandonment or impairment of public school education in this State; that the State calls upon all public school trustees, administrators, teachers, parents, and the public at large to continue full support of the public school system of this State; and that especially during these difficult times all school officials, administrators, teachers and others with primary responsibility for the public school system merit and need continued support and encouragement in their efforts.

Section 3. State educational loan fund created. There shall be, and there is hereby, created in the State Treasury, a special fund to be

known as the "State Educational Loan Fund." The said fund shall consist of such amounts as may be paid into said fund by appropriation and also such amounts as may be returned to said fund as repayments, both principal and interest, from loans hereinafter provided for.

Section 4. Duties and authority of the commission. It shall be the duty of the commission to receive and pass upon, allow or disallow all applications for loans made by students who desire to receive a secular education in any of the grades one (1) through twelve (12) in any school in this State constituting a bona fide school as defined in a general regulation of the commission, other than in the free public school system of this State, and who are acceptable for enrollment in any approved non-free school system. The commission may make such investigation into the financial status of the parents of such students who apply for loans as it deems advisable, to determine the extent of the need for said loan. The commission may prescribe such rules and regulations as it may deem necessary and proper to carry out the purposes of this act.

The commission shall have the authority to grant loans from the "State Educational Loan Fund" to such applicants as are qualified to receive them and on such terms as may be prescribed by regulation of the commission and by this act.

Section 5. Eligibility of applicants. In addition to the requirements set out in Section 4 of this act, to be eligible for a loan an applicant must:

- (a) Be a bona fide actual resident of the State of Mississippi;
- and
- (b) Attend any bonafide approved nonfree elementary or secondary

school.

Section 6. Limitations on amounts of loans.

(a) Applicants who are granted loans may receive a loan in any amount, but not to exceed Two Thousand Four Hundred Dollars (\$2,400.00) to any one (1) applicant, which said amount is to be paid in annual, semi-annual or quarterly installments not to exceed Two Hundred Dollars (\$200.00) per school year with which to defray part of his or her tuition and other costs of attending said schools. The loans herein provided shall not exceed the limitations set out above, but they may be for any such lesser amounts as may be required.

(b) An applicant shall not have to submit but one (1) initial application for a loan and thereafter shall file a request for each additional year's loan amount up to the maximum amount allowed. Accompanying each said request shall be a certification from the school which applicant is attending certifying that applicant is in attendance and in good standing.

(c) In the event that applicant transfers to another approved school within the State, he shall cause certification to immediately go forth to the commission, setting out the school from which and to which he has transferred.

(d) The secular education of children as used in this act shall mean the education of children in those subjects, and only those subjects, which are required to be taught by State law to the same extent as those subjects are taught in the public schools of the State, or which are provided in public schools throughout the State, and shall not include the education of children in any course in religion, or any course expressing religious teaching, or the morals or forms of worship of any sect.

Section 7. Terms and conditions of loans. Each application by or on behalf of said student shall be signed by and be made also in the name of the parent or legal guardian of said student if he or she be a minor. However, the parent or legal guardian shall not be considered the applicant for the purposes of the limitations in Section 6 (a).

Each applicant, if an adult, or his parent or legal guardian in his behalf, if a minor, before being granted a loan shall enter into a contract with the State of Mississippi agreeing to the terms and conditions upon which the loan shall be made, which said contract shall include such terms and conditions necessary to carry out the full purpose and intent of this act, the form of which contract shall be prepared and approved by the Attorney General of this State, and shall be signed by the executive secretary of the commission.

The commission is hereby vested with full and complete authority to sue in its own name any applicant for any balance due the State on any such contract, and such suit shall be filed and conducted by the Attorney General of the State of Mississippi, or by private counsel, which the commission is hereby authorized to employ for such purpose.

Section 8. Repayment of loans. Any loans made or granted to any applicant shall be made and based upon the following conditions of repayment:

(a) Repayment in full of the principal of the loan may be made at any time prior to three (3) years after graduation from or termination of attendance in an approved school, plus simple interest at the rate of three percent (3%) per annum from the date of each payment made to applicant.

(b) Repayment of the principal of the loan after three (3) years



from the date of graduation from or termination of attendance in an approved school shall be with interest at the rate of four percent (4%) per annum from the date of each payment made to applicant. From and after the fourth year following graduation or termination of attendance in an approved school, the rate of interest to be paid on the remaining unpaid balance, after such fourth year, shall increase at the rate of one-half percent (~~1/2~~) per annum to a maximum of eight percent (8%).

(c) (1) The amount of said loan shall be reduced by a credit at the rate of One Hundred Dollars (\$100.00) per annum for each year from and after five (5) years from the initial date of the granting of said loan that applicant continues to reside in the State of Mississippi.

(2) In addition to paragraph (1) above, the amount of said loan shall be reduced by a credit at the rate of One Hundred Dollars (\$100.00) per annum for each year that applicant continues his education at any junior college, college or university within the State of Mississippi after his graduation or termination from secondary school.

(3) In addition to paragraphs (1) and (2) above, the amount of said loan shall be reduced by a credit at the rate of Two Hundred Dollars (\$200.00) per annum for each year that applicant resides within this State and teaches in any school system therein, beginning from the date of his certification or licensing by the State Department of Education to teach in any such system.

(d) No applicant shall be entitled to more than twelve (12) years after said graduation or termination within which to repay said loan.

Section 9. If any clause, sentence, paragraph, section or part of this act shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invali-

date the remainder of this act, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

Section 10. This act shall take effect and be in force from and after its passage.

Approved: September 19, 1969.

#### Textbooks

Section 6646. Uniform textbooks.--1. The State Textbook Board shall adopt and furnish textbooks only for use in those courses set up in the state course of study adopted by the State Board of Education, or courses established by special acts of the Legislature.

Section 6656. Plan.--This act is intended to furnish a plan for the adoption, purchase, distribution, care and use of free textbooks to be loaned to the pupils in all elementary and high schools of Mississippi.

The books herein provided by the board shall be distributed and loaned free of cost to the children of the free public schools of the state, and all other schools located in the state, which maintain educational standards equivalent to the standards established by the state department of education for the state schools....

#### Health Services

Section 6667. Health work.--The state board of education shall make adequate provision for instruction in general hygiene, individual hygiene, group and inter-group hygiene; provisions for a regular periodic and thorough health examination and inspection and for such reasonable correlation as may be necessary for the betterment of health and treatment

of abnormalities through available agencies inside or outside the school system; and provision for education and the health training through physical exercises, games, play, recreation and athletics. But this article, in so far as it provides for medical treatment, shall not be construed to interfere with the practice of religious tenets of any church whatsoever, nor compel submission of any child to medical or surgical treatment without the consent of the parents or guardian of such child.

Right to establish driver education and training programs.

Section 2632-72. The school board of any school district maintaining a secondary school which includes any of the grades nine (9) through twelve (12), inclusive, may, in its discretion, establish and maintain automobile driver training for pupils enrolled in the day secondary schools in that district.

Section 6232-74. Pupil eligibility. Each school district providing driver training and education shall prescribe regulations determining who can best profit by and who shall receive instruction under this program. It is provided, however, that any student receiving instruction under this Act shall be:

- (a) Fourteen (14) years of age or above.
- (b) A regularly enrolled student in the ninth, tenth, eleventh or twelfth grades.
- (c) A full-time student in the respective secondary school.
- (d) Provided, however, that a temporary permit issued by the Mississippi Highway Safety Patrol shall be issued and valid only while a student is actually enrolled in an approved course of driver education which consists of thirty (30) hours of classroom and six (6) hours of

dual driving instruction and said temporary permit shall expire at the end of the driver training course.

...MISSOURI...

School lunch program--funds--duties of state board

Section 167.201. 1. The provisions of the National School Lunch Act, as amended (60 U.S. Stat. at Large 230; 42 U.S.C.A. 1751 to 1760), are accepted, and the funds provided thereby shall be accepted for disbursement.

2. All funds under the provisions of the act shall be deposited in the state treasury to the credit of the fund to be known as the "School Lunch Fund" which is hereby established.

3. The state board of education is designated as the state educational agency, as provided in the act, and is charged with the duty and responsibility of cooperating with the Secretary of Agriculture in the administration of the act and is delegated all power necessary to such cooperation.

...MONTANA...

Transportation

Section 75-3408. Attending other than public school.--Any child attending other than a public school may secure from the clerk of the school district a permit to ride on a public school bus, provided, that, for such service the parents or guardian of the child shall pay their proportionate share of the cost of such transportation.

...NEBRASKA...

...NEVADA...

## ...NEW HAMPSHIRE...

Transportation

Section 189.9. Pupils in private schools.--Pupils attending approved private schools, up to and including the ninth grade, shall be entitled to the same transportation privileges within any town or district as are provided for pupils in public schools.

Shared-time

## Section 198.21. Dual Enrollment Grants

I. Any school district which has in operation an approved dual enrollment agreement under the provisions of RSA 193:1-a shall be granted for the first school year that such agreement is in operation the full operational costs of implementing such agreement, exclusive of any part of the cost and carrying charges of any capital improvements; and for the next succeeding school year, if such operation is then continued, one half of such costs.

II. Application for any such grant shall be submitted by a district to the state board of education no later than the July first preceding the start of the school year for which it shall be applicable, provided that the board may, for good cause shown, accept any such application up to but no later than the start of the applicable school year.

III. The board shall determine what costs shall be allowed in computing the amount of any grant, and shall make payments of such grants from the funds appropriated therefor.

IV. In the event that for any year insufficient sums are available to pay grants in full as provided by this section to all qualified applying school districts the state board of education shall prorate such

grants so that all such districts receive the same proportion.

V. No pupil counted by any school district for the purpose of calculating the amount of a grant to be paid pursuant to this section shall for the same school year by the same district be included in average daily membership for the purposes of foundation aid or counted for the purposes of grants pursuant to RSA 198:22.

#### Driver Education

Section 262:1-a. Traffic Safety Fund. The proceeds from service fees for initial number plates collected in accordance with RSA 260:10-a, after costs of plates and issuance of same have been appropriated and deducted, shall, subject to budgetary requirements of RSA 9, be expended solely for courses of instruction and training in safe motor vehicle driving conducted in or under the supervision of secondary schools. Subject to final approval by the governor and council, the director of the division of motor vehicles shall promulgate and publish rules and regulations governing the courses of instruction and training and determining eligibility of secondary schools to receive monies from said initial plate fund.

#### Health and other services

Section 189:49. Child Benefit Services. Optional Services. The school board of any school district may provide the following child benefit services for pupils in each public and nonpublic school in the district:

- I. School physician services under the provisions of RSA 200:15-25.
- II. School nurse services.
- III. School health services.
- IV. School guidance and psychologist services.
- V. Educational testing services.

Section 198:22. Child Benefit Service Grants

I. Any school district which is providing any child benefit service pursuant to the authority of RSA 189:49 and 50 shall be granted the following proportion of the costs, exclusive of any part of the cost and carrying charges of any capital improvements, of providing such service to any student who regularly attends a nonpublic school within the district for more than one half each school day:

(a) Not more than seventy percent of such cost of any such service.

II. Application for any grant provided for in paragraph I shall be submitted by a district to the state board of education no later than the August first following the end of the school year for which it shall be applicable.

III. The board shall determine what costs shall be allowed in computing and the amount of any grant, and shall make payments of such grants from the funds appropriated therefor.

IV. In the event that for any year insufficient sums are available to pay grants in full as provided by this section to all qualified applying school districts the state board of education shall prorate such grants so that all such districts receive the same proportion thereof.

...NEW JERSEY...

Transportation To and From Schools

Section 18A:39-1. Transportation of pupils remote from schools.

Whenever in any district there are pupils residing remote from any schoolhouse, the board of education of the district may make rules and contracts for the transportation of such pupils to and from school, including the transportation of school pupils to and from school other than a

public school, except such school as is operated for profit in whole or in part.

When any school district provides any transportation for public school pupils to and from school pursuant to this section, transportation shall be supplied to school pupils residing in such school district in going to and from any remote school other than a public school, not operated for profit in whole or in part, located within the State not more than 20 miles from the residence of the pupil provided the per pupil cost of the lowest bid received does not exceed \$150.00 and if such bid shall exceed said cost then the parent, guardian or other person having legal custody of the pupil shall be eligible to receive said amount toward the cost of his transportation to a qualified school other than a public school, regardless of whether such transportation is along established public school routes. It shall be the obligation of the parent, guardian or other person having legal custody of the pupil attending a remote school, other than a public school, not operating for profit in whole or in part, to register said pupil with the office of the secretary of the board of education at the time and in the manner specified by rules and regulations of the State board in order to be eligible for the transportation provided by this section. If the registration of any such pupil is not completed by September 1 of the school year and if it is necessary for the board of education to enter into a contract establishing a new route in order to provide such transportation then the board shall not be required to provide it, but in lieu thereof the parent, guardian or other person having legal custody of the pupil shall be eligible to receive \$150.00 or an amount computed by multiplying \$0.8333 times the number of school days remaining in the school year at the time of registration,



whichever is the smaller amount. Whenever any regional school district provides any transportation for pupils attending schools other than public schools pursuant to this section, said regional district shall assume responsibility for the transportation of all such pupils, and the cost of such transportation for pupils below the grade level for which the regional district was organized, shall be prorated by the regional district among the constituent districts on a per pupil basis after approval of such cost by the county superintendent. This section shall not require school districts to provide any transportation to pupils attending a school other than a public school where the only transportation presently provided by said district is for school children transported (sic) pursuant to chapter 46 of this Title or for pupils transported to a vocational, technical or other public school offering a specialized program. Any transportation to a school, other than a public school, shall be pursuant to the same rules and regulations promulgated by the State Board as governs transportation to any public school.

Nothing in this section shall be so construed as to prohibit a board of education from making contracts for the transportation of pupils to a school in an adjoining district when such pupils are transferred to the district by order of the county superintendent, or when any pupils shall attend school in a district other than that in which they shall reside by virtue of an agreement made by the respective boards of education.

Nothing herein contained shall limit or diminish in any way any of the provisions for transportation for children pursuant to chapter 46 of this Title.

Aid to the Handicapped

Section 18A:46-13. Facilities to be furnished.

It shall be the duty of each board of education to provide suitable facilities and programs of education for all the children who are classified as handicapped under this chapter except those so mentally retarded as to be neither educable nor trainable. The absence or unavailability of a special class facility in any district shall not be construed as relieving a board of education of the responsibility for providing education for any child who qualifies under this chapter.

...NEW MEXICO...

...NEW YORK...

Health and welfare services to all children

Section 912, Education Law. The voters and/or the trustees or board of education of a school district, shall provide resident children who attend schools other than public with all or any of the health and welfare services and facilities, including but not limited to health, surgical, medical, dental and therapeutic care and treatment, and corrective aids and appliances, authorized by law and now granted or hereafter made available by such voters and/or trustees or board of education for or to children in the public schools in so far as these services and facilities may be requested by the authorities of the schools other than public. Any such services or facilities shall be so provided notwithstanding any provision of any charter or other provision of law inconsistent herewith. Where children residing in one school district attend a school other than public located in another school district, the school authorities of the district of residence shall contract with the school authorities of the district where such nonpublic school is located, for the provision of such health and welfare services and facilities to such children by the

school district where such nonpublic school is located, for a consideration to be agreed upon between the school authorities of such districts, subject to the approval of the qualified voters of the district of residence when required under the provisions of this chapter. Every such contract shall be in writing and in the form prescribed by the commissioner of education, and before such contract is executed the same shall be submitted for approval to the superintendent of schools having jurisdiction over such district of residence and such contract shall not become effective until approved by such superintendent.

#### Transportation

Section 3635. Transportation.--1. Sufficient transportation facilities (including the operation and maintenance of motor vehicles) shall be provided by the school district for all the children residing within the school district to and from the school they legally attend, who are in need of such transportation because of the remoteness of the school to the child or for the promotion of the best interest of such children. Such transportation shall be provided for all children attending grades kindergarten through eight who live more than two miles from the school which they legally attend and for all children attending grades nine through twelve who live more than three miles from the school which they legally attend, and shall be provided for each such child up to a distance of ten miles, the distances in each case being measured by the nearest available route from home to school. The cost of providing such transportation between two or three miles, as the case may be, and ten miles shall be considered for the purposes of this chapter to be a charge upon the district and an ordinary contingent expense of the district. Transportation for a lesser distance than two miles in the case of children attending grades

kindergarten through eight or three miles in the case of children attending grades nine through twelve and for a greater distance than ten miles may be provided by the district, and, if provided, shall be offered equally to all children in like circumstances residing in the district. The foregoing provisions of this subdivision shall not require transportation to be provided for children residing within a city school district, but if provided by such district pursuant to other provisions of this chapter, such transportation shall be offered equally to all such children in like circumstances. Nothing contained in this subdivision, however, shall be deemed to require a school district (i) to furnish transportation to a child directly to or from his home, or (ii) in the case of a child attending a parochial school of his denomination, to furnish transportation except to or from the nearest available parochial school of such denomination.

#### Textbooks

Section 701. Purchase and loan of textbooks.

(3) In the several cities and school districts of the state, boards of education, trustees or such body or officers as perform the function of such boards shall have the power and duty to purchase and to loan upon individual request, to all children residing in such district who are enrolled in grades seven to twelve of a public or private school which complies with the compulsory education law, textbooks. Textbooks loaned to children enrolled in grades seven to twelve of said private schools shall be textbooks which are designated for use in any public, elementary or secondary schools of the state or are approved by any boards of education, trustees or other school authorities. Such textbooks are to be loaned free to such children subject to such rules and regulations as are or may

be prescribed by the board of regents and such boards of education, trustees or other school authorities.

(4) The Commissioner of education, in addition to the annual apportionment of public monies pursuant to article seventy-three of this chapter, shall apportion to each school district an amount equal to the cost of the textbooks purchased and loaned by the district pursuant to this section, but in no case shall the aid apportioned to the district be in excess of ten dollars per pupil for each pupil who resides within the school district and is loaned textbooks pursuant to this section.

...NORTH CAROLINA...

Use of Federal Funds for Private Schools

Section 115-11 (17). Power to Provide Library Resources, Textbooks and Other Instructional Materials to Private Schools.--The State Board of Education or any other State agency designated by the Governor shall have the power and authority to provide library resources, textbooks, and other instructional materials purchased from Federal funds appropriated for the funding of the Elementary and Secondary Education Act of 1965 (Public Law 89-10, 89th Congress, HR 2362, effective April 11, 1965) or other acts of Congress for the use of children and teachers in private elementary and secondary schools in the State as required by acts of Congress and rules and regulations promulgated thereunder.

...NORTH DAKOTA...

Transportation of nonpublic elementary and high school students--Conditions.--

Section 15-34-28. When authorized by the school board of a public school

district providing transportation for public elementary and high school students, elementary and high school students attending nonpublic schools may be transported on public school buses to and from the point or points on established public school bus routes on such days and during the times that the public school buses normally operate. The school board of a public school district may authorize and agree to the transportation of such students only when there is passenger room available on such buses, according to the legal passenger capacity for such buses, when such buses are scheduled according to the provisions of this section; provided, however, no payments shall be made from the county or state equalization funds for any mileage costs for any deviation from the established public routes which may be caused by any agreement entered into pursuant to this section.

...OHIO...

Transportation of pupils

Section 3327.01. In all city, exempted village, and local school districts where resident elementary school pupils live more than two miles from the school for which the state board of education prescribes minimum standards pursuant to division (D) of section 3301.07 of the Revised Code and to which they are assigned by the board of education of the district of residence or to and from the non-public school which they attend the board of education shall provide transportation for such pupils to and from such school except when, in the judgment of such board, confirmed by the state board of education, such transportation is unnecessary or unreasonable.

In all city, exempted village, and local school districts the board may provide transportation for resident high school pupils to and

from the high school to which they are assigned by the board of education of the district of residence or to and from the non-public high school which they attend for which the state board of education prescribes minimum standards pursuant to division (D) of section 3301.07 of the Revised Code.

In determining the necessity for transportation, availability of facilities and distance to the school shall be considered.

A board of education shall not be required to transport elementary or high school pupils to and from a non-public school where such transportation would require more than thirty minutes of direct travel time as measured by school bus from the collection point as designated by the coordinator of school transportation, appointed under section 3327.011 (3327.01.1) of the Revised Code, for the attendance area of the district of residence.

Where it is impractical to transport a pupil by school conveyance, a board of education may, in lieu of providing such transportation, pay a parent, guardian, or other person in charge of such child, an amount per pupil which shall in no event exceed the average transportation cost per pupil, such average cost to be based on the cost of transportation of children by all boards of education in this state during the next preceding year.

In all city, exempted village, and local school districts the board shall provide transportation for all children who are so crippled that they are unable to walk to and from the school for which the state board of education prescribes minimum standards pursuant to division (D) of section 3301.07 of the Revised Code and which they attend. In case of dispute whether the child is able to walk to and from the school,

the health commissioner shall be the judge of such ability.

When transportation of pupils is provided the conveyance shall be run on a time schedule that shall be adopted and put in force by the board not later than ten days after the beginning of the school term.

A district receiving a payment pursuant to division (B) of section 3317.02 of the Revised Code is not eligible for reimbursement of transportation operating costs or eligible for school bus purchase subsidy payment pursuant to section 3317.06 of the Revised Code, except for transporting children who are crippled and for transporting pupils attending non-public schools.

The cost of any transportation service authorized by this section shall be paid first out of federal funds, if any, available for the purpose of pupil transportation, and secondly out of state appropriations, in accordance with regulations adopted by the state board of education.

No transportation of elementary or high school pupils shall be provided by any board of education to or from any school which in the selection of pupils, faculty members, or employees, practices discrimination against any person on the grounds of race, color, religion or national origin.

Purchase of vocational education from private source

Section 3313.91. Any public board of education may contract with any public agency, board, or bureau, or with any private individual or firm for the purchase of any vocational education or vocational rehabilitation service for any resident of the district under the age of twenty-one years and may pay for such services with public funds. Any such vocational education or vocational rehabilitation (sic) service shall meet the same requirements, including those for teachers, facilities, and equip-



ment, as those required of the public schools and be approved by the state department of education.

Purchase of services

Section 3317.06. Distribution of payments for educational programs and special circumstances; auxiliary services. In addition to the moneys paid to eligible school districts pursuant to section 3317.02 of the Revised Code, there shall be distributed monthly, quarterly, or annually as may be determined by the state board of education, moneys appropriated for Chapter 3317. of the Revised Code for the following education programs:

(A) An amount for the approved cost of board and transportation required for physically or emotionally handicapped children attending regular school or special education classes, the cost of teacher training contracted under section 3323.01 of the Revised Code and the cost of home instruction for physically or emotionally handicapped children and special instructional services for physically or emotionally handicapped children. Such distribution shall be made on the basis of standards adopted by the state board of education.

(B) An amount for each island school district and each joint state school district for the operation of each high school and each elementary school maintained within such district, to each district with one-teacher or two-teacher elementary schools, and to each county board of education. Such amounts shall be determined on the basis of standards adopted by the state board of education.

(C) An amount to each school district operating classes for children of migrant workers who are unable to be in attendance in an Ohio school during the entire regular school year. Such amounts shall be

determined on the basis of standards adopted by the state board of education, except that payment shall be made only for subjects regularly offered by the school district providing the classes.

(D) An amount for each school district with guidance, testing, and counseling programs approved by the state board of education. The amount to be determined on the basis of standards adopted by the state board of education.

(E) An amount for the emergency purchase of school buses as provided for in section 3317.07 of the Revised Code;

(F) A(n) amount for each eligible school district for the improvement of the educational and cultural status of disadvantaged pupils, to be determined by the state board of education, but not exceed an annual amount in fiscal 1970 equal to one hundred fifty dollars and thereafter equal to one hundred seventy-five dollars, times the number of children ages five through seventeen residing in the school district who were receiving aid to dependent children during the month of December preceding the start of the fiscal year. No school district shall receive funds pursuant to this division unless the state board of education has approved a program designed and submitted by the school district. No school district shall receive funds pursuant to this division unless the district include one hundred residents between five and seventeen years of age who are receiving aid to dependent children, or includes a number of such residents equal to five per cent of the average daily membership of the school district as reported pursuant to section 3317.03 of the Revised Code, or both. The state board of education shall adopt rules and regulations implementing this subsidy.

(G) A(n) amount for adult basic literary education approved by

the state board of education. The amount to be determined on the basis of standards adopted by the state board of education.

(H) An amount to each school district as approved by the state department of education, to provide services and materials to pupils attending nonpublic schools within the school district for: guidance, testing, and counseling programs; programs for the deaf, blind, emotionally disturbed, crippled, and physically handicapped children; audio visual aids; speech and hearing services; remedial reading programs; educational television services; programs for the improvement of the educational and cultural status of disadvantaged pupils, approved pursuant to division (F) of this section; and for programs for the enhancement of instruction in secular courses required to be taught in nonpublic schools by minimum standards adopted by the state board of education pursuant to section 3301.07 of the Revised Code. Such programs of enhancement of secular instruction are to be accomplished by supplementary educational service contracts between the school district and lay teachers who teach one or more such required secular courses, who are employed by nonpublic schools complying with state board of education minimum standards, who, no later than July 1, 1970 hold valid certificates meeting qualifications required for certificates valid for teaching in the public schools issued by the state board of education certifying qualification to instruct pupils in one or more such required secular courses, and who make written application for such educational service contract salary supplementation. Such contracts shall be entered into on the basis of guidelines adopted by the state department of education. Such guidelines shall provide equitable salary supplementation for lay teachers based upon the percentage of full-time service each such lay teacher devotes to instruction

in secular subjects. Such services, instructional materials, or programs provided (sic) for pupils attending nonpublic schools shall not exceed in cost or quality such services, instructional materials, and programs as provided for pupils in the public schools of the district. Textbooks and other instructional material used in secular courses by nonpublic teachers receiving salary supplementation from public funds shall be nonsectarian in nature.

To determine whether the services, materials, and programs provided for the benefit of non-public school pupils pursuant to this division achieve the purposes of encouraging and enhancing the means of secular instruction and of promoting the continued availability of high quality general education in nonpublic schools, the superintendent of public instruction shall periodically review courses of study, programs of student and teacher evaluation, and pupil achievement tests utilized in nonpublic schools. Each nonpublic school shall establish a satisfactory program of evaluation which measures pupil achievement in required secular courses taught by teachers who are receiving educational service contract salary supplements under this division.

No school district shall provide services, materials, or programs for use in sectarian religious courses or devotional exercises. No educational materials provided shall be used in, especially suitable for use in, or selected for use in sectarian religious courses or devotional exercises.

Educational services, materials, and programs provided for the benefit of nonpublic school pupils under this division shall be provided without distinction as to the race, color, or creed of such pupils or of their teachers. No services, materials, or programs shall be provided

for pupils in nonpublic schools unless such services, materials, or programs are available for pupils in the public schools of the school district.

The state department of education shall adopt guidelines and procedures under which such programs and services shall be provided. Nothing in this division shall be construed as entitling nonpublic school teachers who enter into supplementary educational service contracts to participation in the state teachers retirement system provided for in Chapter 3307. of the Revised Code, to workmen's compensation benefits pursuant to Chapter 4123. of the Revised Code, to sick leave benefits pursuant to section 143.29 of the Revised Code, or as causing such nonpublic school teachers to be included in the definition of "teacher" as defined in division (A) of section 3319.09 of the Revised Code.

(I) An amount pursuant to section 3301.17 of the Revised Code for conducting driver education courses at high schools for which the state board of education prescribes minimum standards;

(J) An amount to each school district with resident school age children enrolled in a school administered by a county board of mental retardation, equal to twenty-five dollars times the number of such children. No funds shall be paid pursuant to this division prior to July 1, 1968.

The state board of education or any other board of education may provide for any resident of a district any educational service for which funds are made available to such board of education by the United States under the authority of public law, whether such funds come directly or indirectly from the United States or any agency or department thereof or

through the state of Ohio or any agency, department, or political subdivision thereof.

The emergency board, upon the declaration of an educational emergency by the governor, may upon application by the superintendent of public instruction authorize payments pursuant to sections 127.01 to 127.05, inclusive of the Revised Code to be made to any school district which (1) has an unexpected increase in enrollment resulting from the destruction of or the necessary closing of a school because of fire, flood or other calamity, or (2) has a severe reduction in taxable valuation for school purposes. The superintendent of public instruction shall apply for funds for any school district requesting such aid upon receipt of written evidence from the school district of (1) the enrollment increase along with an explanation of the school district or districts from which the increased enrollment has been received or (2) of the tax revenue loss sustained by the school district, depending upon the circumstances for which aid is requested.

Funds distributed pursuant to any division of this section shall not exceed specific appropriations made therefor by the general assembly, unless expressly approved by the emergency board or the controlling board.

...OKLAHOMA...

...OREGON...

#### Transportation

Section 332.415. Transportation of children attending private or parochial schools.--Whenever any district school board lawfully provides for transportation for pupils attending public schools, all children attending

any private or parochial school under the compulsory school attendance laws shall, where the private or parochial school is along or near the route designated by said board, be entitled equally to the same rights, benefits and privileges as to transportation so provided for.

#### School Lunch Funds

Section 327.520. Acceptance and distribution of donated commodities.

The Superintendent of Public Instruction may accept and distribute donated commodities available for either public or private nonprofit educational institutions, subject to state or federal law or regulation relating to such acceptance and distribution. He shall make a charge sufficient to cover but not exceed all costs of distribution to the individual schools. The charge may include administrative expenses, freight, warehousing, storing, processing and transshipment to the end that all participating schools shall receive such donated commodities at the same unit cost irrespective of location of the school with respect to the original point of delivery within the state.

#### Driver Education

Section 343.730. State reimbursement. (1) Each district offering a course in automobile driver instruction and the Oregon State School for the Deaf, the Hillcrest School of Oregon or the MacLaren School for Boys, if any such school offers a course in automobile-driver instruction, shall keep accurate records of the cost thereof in the manner required by the Superintendent of Public Instruction. Each district, the Oregon State School for the Deaf, the Hillcrest School of Oregon or the MacLaren School for Boys shall be reimbursed to the extent of 90 percent of its cost for conducting the course. However, the amount paid shall not exceed \$50 per

pupil completing the course nor shall it exceed a prorata portion of the Student Driver Training Fund, based on the number of pupils enrolled in such courses at all public, private or parochial high schools, community colleges, the Oregon State School for the Deaf, the Hillcrest School of Oregon and the MacLaren School for Boys. If tuition is charged for driver instruction, the amount of state reimbursement shall not exceed the difference between the approved cost and the tuition charged or \$50 per pupil, whichever is the lesser.

(2) As soon as possible after June 30 of each year, the State Treasurer shall transfer to the State Highway Fund any unobligated and unexpended moneys remaining as of June 30 of that year in the Student Driver Training Fund.

...PENNSYLVANIA...

Purchase of Services--Pennsylvania Nonpublic Elementary And Secondary Education Act

Public Law 109, Act of June, 1968. To promote the welfare of the people of the Commonwealth of Pennsylvania; to promote the secular education of children of the Commonwealth of Pennsylvania attending nonpublic schools; creating a Nonpublic Elementary and Secondary Education Fund to finance the purchase of secular educational services from nonpublic schools located within the Commonwealth of Pennsylvania for the benefit of residents of the Commonwealth of Pennsylvania; authorizing the Superintendent of Public Instruction to enter into contracts to carry out the intent and purposes of this act, and to establish such rules and regulations as are necessary; providing for the payment of administrative costs incident to the operation of the act; providing procedures for reimbursement in



payment for the rendering of secular educational service; and designating a portion of revenues of the State Harness Racing Fund and of the State Horse Racing Fund as the sources of funds.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short Title.--This act shall be known and may be cited as the "Nonpublic Elementary and Secondary Education Act."

Section 2. Legislative Finding; Declaration of Policy.--It is hereby determined and declared as a matter of legislative finding--

(1) That a crisis in elementary and secondary education exists in the Nation and in the Commonwealth involving (i) the new recognition of our intellectual and cultural resources as prime national assets and of the national imperative now to spur the maximum educational development of every young American's capacity; (ii) rapidly increasing costs occasioned by the rise in school population, consequent demands for more teachers and facilities, new but costly demands, in the endeavor for excellence upon education generally; the general impact of inflation upon the economy; and the struggle of the Commonwealth, commonly with many other states, to find sources by which to finance education, while also attempting to bear the mounting financial burden of the many other areas of modern State governmental responsibility;

(2) That nonpublic education in the Commonwealth today, as during past recent decades, bears the burden of educating more than twenty per cent of all elementary and secondary school pupils in Pennsylvania; that the requirements of the compulsory school attendance laws of the Commonwealth are fulfilled through nonpublic education;

(3) That the elementary and secondary education of children is today recognized as a public welfare purpose; that nonpublic education, through providing instruction in secular subjects, makes an important contribution to the achieving of such public welfare purpose; that the governmental duty to support the achieving of public welfare purposes in education may be in part fulfilled through government's support of those purely secular educational objectives achieved through nonpublic education;

(4) That freedom to choose nonpublic education, meeting reasonable State standards, for a child is a fundamental parental liberty and a basic right;

(5) That the Commonwealth has the right and freedom, in the fulfillment of its duties, to enter into contracts for the purchase of needed services with persons or institutions whether public or nonpublic, sectarian or nonsectarian;

(6) That, should a majority of parents of the present nonpublic school population desire to remove their children to the public schools of the Commonwealth, an intolerable added financial burden to the public would result, as well as school stoppages and long term derangement and impairment of education in Pennsylvania; that such hazard to the education of children may be substantially reduced and all education in the Commonwealth improved through the purchase herein provided of secular educational services from Pennsylvania nonpublic schools.

Section 3. Definitions.--The following terms whenever used or referred to in this act shall have the following meanings, except in those instances where the context clearly indicates otherwise:

(1) "Nonpublic Elementary and Secondary Education Fund" shall

mean the fund created by this act.

(2) "Secular educational service" shall mean the providing of instruction in a secular subject.

(3) "Secular subject" shall mean any course which is presented in the curricula of the public schools of the Commonwealth and shall not include any subject matter expressing religious teaching, or the morals or forms of worship of any sect.

(4) "Nonpublic school" shall mean any school, other than a public school, within the Commonwealth of Pennsylvania, wherein a resident of the Commonwealth may legally fulfill the compulsory school attendance requirements of law.

(5) "Purchase secular educational service" shall mean the purchase by the Superintendent of Public Instruction from a nonpublic school, pursuant to contract, of secular educational service at the reasonable cost thereof.

(6) "Reasonable cost" shall mean the actual cost to a nonpublic school of providing a secular educational service and shall be deemed to include solely the cost pertaining thereto of teachers' salaries, textbooks and instructional materials.

Section 4. Nonpublic Elementary and Secondary Education Fund.--There is hereby created for the special purpose of this act a Nonpublic Elementary and Secondary Education Fund dedicated to the particular use of purchasing secular educational service consisting of courses solely in the following subjects: mathematics, modern foreign languages, physical science, and physical education, provided, however, that as a condition for payment by the Superintendent of Public Instruction for secular educational service rendered hereunder, the Superintendent of Public Instruction shall

establish that (i) solely textbooks and other instructional materials approved by the Superintendent of Public Instruction shall have been employed in the instruction rendered; (ii) a satisfactory level of pupil performance in standardized tests approved by the Superintendent of Public Instruction, shall have been attained; (iii) after five years following the effective date of this act, the secular educational service for which reimbursement is sought was rendered by teachers holding certification approved by the Department of Public Instruction as equal to the standards of this Commonwealth for teachers in the public schools; Provided, however, That any such service rendered by a teacher who, at the effective date of this act, was a full time teacher in a nonpublic school, shall be deemed to meet this condition.

Section 5. Administration.--The administration of this act shall be under the direction of the Superintendent of Public Instruction, who shall establish rules and regulations pertaining thereto, make contracts of every name and number, and execute all instruments necessary or convenient for the purchase of secular educational service hereunder. All expenses incurred in connection with the administration of this act shall be paid solely out of the Nonpublic Elementary and Secondary Education Fund and no money raised for the support of the public schools of the Commonwealth shall be used in connection with the administration of this act.

Section 6. Moneys for Fund.--(a) Permanent moneys. Into the Nonpublic Elementary and Secondary Education Fund shall be paid each year:

(1) All proceeds from horse racing up to the first ten million dollars (\$10,000,000) realized by the State Horse Racing Fund established

by the act of December 11, 1967 (Act No. 331), remaining after, and not required for, payment of all of the items of administrative cost set forth in subsection (b) of Section 18 of that act, plus

(2) One-half of all such horse racing proceeds in excess of the sum of ten million dollars (\$10,000,000), the remaining half thereof to be paid into the General Fund.

(b) Temporary moneys. Until the time that proceeds in the amount of ten million dollars (\$10,000,000) shall, in a given fiscal year, have been paid into the Nonpublic Elementary and Secondary Education Fund as provided for under subsection (a) of Section 6 hereof, three-fourths of the proceeds from harness racing realized by the State Harness Racing Fund established by the act of December 22, 1959 (P.L. 1978), as amended, remaining after and not required for, the payments provided for in subsections (b) and (d) of Section 16 of that act, shall be paid into the Nonpublic Elementary and Secondary Education Fund according to the following formula:

(1) The entire three-fourths of the harness racing proceeds for any fiscal year shall be paid into the Nonpublic Elementary and Secondary Education Fund until such year as the horse racing proceeds designated by this section for the said fund are of such amount that, combined with the harness racing proceeds, the sum of ten million dollars (\$10,000,000) shall have been realized by the Nonpublic Elementary and Secondary Education Fund.

(2) Proceeds from harness racing shall cease to be paid into the Nonpublic Elementary and Secondary Education Fund for any fiscal year in which proceeds from horse racing, designated by this section for the Nonpublic Elementary and Secondary Education Fund, shall equal ten

million dollars (\$10,000,000).

Moneys in the Nonpublic Elementary and Secondary Education Fund are hereby appropriated to the Department of Public Instruction to be used by the Superintendent of Public Instruction solely for the purchase of secular educational service hereunder and administrative expenses pertaining thereto as provided for in Section 5 of this act.

Section 7. Reimbursement Procedures.--(a) Requests for reimbursement in payment for the purchase of secular educational service hereunder shall be made on such forms and under such conditions as the Superintendent of Public Instruction shall prescribe. Any nonpublic school seeking such reimbursement shall maintain such accounting procedures, including maintenance of separate funds and accounts pertaining to the cost of secular educational service, as to establish that it actually expended in support of such service an amount of money equal to the amount of money sought in reimbursement. Such accounts shall be subject to audit by the Auditor General. Reimbursement payments shall be made by the Superintendent of Public Instruction in four equal installments payable on the first day of September, December, March and June of the school term following the school term in which the secular educational service was rendered.

(b) Reimbursements for any fiscal year for the purchase of secular educational service hereunder shall not exceed the total amount of the moneys which were actually paid into the Nonpublic Elementary and Secondary Education Fund in that fiscal year.

(c) In the event that, in any fiscal year, the total amount of moneys which were actually paid into the Nonpublic Elementary and Secondary Education Fund shall be insufficient to pay the total amount of

validated requests hereunder in reimbursement for that year, reimbursements shall be made in that proportion which the total amount of such requests bears to the total amount of moneys in the Nonpublic Elementary and Secondary Education Fund.

(d) The Budget Secretary shall, by July fifteenth of each year, certify to the Superintendent of Public Instruction, the total amount of money in the Nonpublic Elementary and Secondary Education Fund.

Section 8. Effective Date.--This act shall take effect July 1, 1968.

Section 9. Severability.--If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect, in all valid applications that are severable from the invalid applications.

#### Shared-time

Section 5-502. Additional schools and departments. In addition to the elementary public schools, the board of school directors in any school district may establish, equip, furnish, and maintain the following additional schools or departments for the education and recreation of persons residing in said district, and for the proper operation of its schools, namely:--

High schools,	Museums,
Trade schools,	Reading-rooms,
Vocational schools,	Gymnasiums,
Technical schools,	Playgrounds,
Cafeterias,	Schools for physically and mentally handicapped,
Agricultural schools,	Truant schools,
Evening schools,	Parental schools
Kindergartens,	Schools for adults,
Libraries,	Public lectures,

Such other schools or educational departments as the directors, in their wisdom, may see proper to establish.

Said additional schools or departments, when established, shall be an integral part of the public school system in such school district and shall be so administered.

No pupil shall be refused admission to the courses in these additional schools or departments, by reason of the fact that his elementary or academic education is being or has been received in a school other than a public school.

Standardized driver-education program

Section 15-1519.1. (a) The Department of Public Instruction shall establish, for operation in the public school system of the Commonwealth, a standardized driver-education program in the safe operation of motor vehicles.

(b) The Department of Public Instruction shall assist school districts throughout the Commonwealth in the functioning of such program by--

(1) Preparation, publication and free distribution of driver-education instructional material to insure a more complete understanding of the duties of motor vehicle operators;

(2) Making such rules and regulations as may be necessary to carry out such program.

(c) Annual expenditures of the Department of Public Instruction from the Motor License Fund for: (1) salaries and expenses of employees of the Department of Public Instruction essential to the program; (2) purchase of visual training aids and psycho-physical testing equipment; and (3) costs of preparation, publication and distribution of driver-



education programs, shall not exceed five (5) percentum of the annual total amount paid by the Commonwealth to all school districts on account of standardized driver-education programs.

Nonprofit school lunch program

Section 13-1337. (a) Definitions.--For the purpose of this section-- "school lunch program" means a program under which lunches are served by any school on a nonprofit basis to children in attendance, including any such program under which a school receives assistance out of funds appropriated by the Congress of the United States.

(b) Expenditure of Federal Funds.--The Department of Public Instruction is hereby authorized to accept and direct the disbursement of funds appropriated by any act of Congress, and apportioned to the State, for use in connection with school lunch programs. The Department of Public Instruction shall deposit all such funds received from the Federal Government in a special account with the Treasurer of the State who shall make disbursements therefrom upon the direction of the Department of Public Instruction.

(c) Administration of Program.--The Department of Public Instruction may enter into such agreements with any agency of the Federal Government, with any board of school directors, or with any other agency or person prescribe such regulations, employ such personnel, and take such other action as it may deem necessary to provide for the establishment, maintenance, operation and expansion of any school lunch program, and to direct the disbursement of Federal and State funds in accordance with any applicable provisions of Federal or State law. The Department of Public Instruction may give technical advice and assistance to any board of school directors in connection with the establishment and

operation of any school lunch program, and may assist in training personnel engaged in the operation of such program. The Department of Public Instruction, and any board of school directors, may accept any gift for use in connection with any school lunch program.

### Transportation

Section 13-1361. When provided. The board of school directors in any school district may, out of the funds of the district, provide for the free transportation of any resident pupil to and from the public schools and to and from any points in the Commonwealth in order to provide tours for any purpose connected with the educational pursuits of the pupils. When provision is made by a board of school directors for the transportation of resident pupils to and from the public schools, the board of school directors shall also make provision for the free transportation of pupils who regularly attend nonpublic elementary and high schools not operated for profit. Such transportation provided for pupils attending nonpublic elementary and high schools not operated for profit shall be over established public school bus routes. Such pupils shall be transported to and from the point or points on such routes nearest or most convenient to the school which such pupils attend. The board of school directors shall provide such transportation whenever so required by any of the provisions of this act or of any other act of Assembly.

The board of school directors in any school district may, if the board deems it to the best interest of the school district, for the purposes of transporting pupils as required or authorized by any of the provisions of this act or of any other act of the Assembly, appropriate funds for urban common carrier mass transportation purposes from current revenues to urban common carrier mass transportation authorities to

assist the authorities to meet costs of operation, maintenance, capital improvements and debt service. Said contributions shall not be subject to reimbursement by the Commonwealth of Pennsylvania.

The State Board of Education shall adopt regulations, including qualifications of school bus drivers, to govern the transportation of school pupils.

...RHODE ISLAND...

Salary Supplements To Nonpublic Schoolteachers

Section 16-15-1. Legislative findings--Declaration of policy.--The general assembly being charged by the constitution of this state with the duty not only of promoting public schools but also adopting "all means which they may deem necessary and proper to secure to the people the advantages and opportunities of education" makes the following findings: The public laws of 1960, chapter 27 (now part of chapter 7 of this title declares that the purpose of that law is)"to provide a quality education for all Rhode Island youth." This (chapter) implements that policy by providing that the state shall assist the cities and towns by paying part of the operating revenues for the public schools.

But there are in Rhode Island approximately forty-five thousand (45,000) children attending nonpublic elementary schools. They constitute about twenty-five per cent (25%) of the total school population at these age levels.

Because nonpublic schools enroll such a significant portion of the total school population of the state, the state's policy of providing a quality education for all Rhode Island youth would be seriously impaired if the quality of education provided in said schools were to deteriorate.

Nonpublic schools are finding it increasingly difficult to maintain their traditional quality, due to rising costs. This is particularly serious with regard to the salaries of teachers; without adequate salary scales, no school can attract sufficient numbers of competent, dedicated teachers; and teachers are the prime factor in educational quality. These facts were recognized for the public schools in 1960, and dealt with by the passage of chapter 27 of the public laws of that year.

It is, therefore, the policy of the state of Rhode Island to provide a quality education for all Rhode Island youth, those in public and nonpublic schools alike; within the limitations imposed by the constitutions of the United States and of Rhode Island. In pursuance of said policy, in order to assist nonpublic schools to provide salary scales which will enable them to retain and obtain teaching personnel who meet recognized standards of quality, we hereby enact the following:

Section 16-51-2. Definitions.--As used in this chapter unless the context clearly indicates otherwise:

1. "Nonpublic school" shall mean any school not operated for profit, other than a public school, within this state wherein a resident of this state may legally fulfill the compulsory school attendance requirements of the law, except such schools whose annual per student expenditure for secular education equals or exceeds the average annual per student expenditure in the public schools in the state at the same grade level in the second preceding fiscal year for school operations as determined by the commissioner of education.

2. "Nonpublic school teacher" shall mean a teacher who teaches in a nonpublic school exclusively only those subjects required to be

taught by state law, to the same extent as those subjects are taught in public schools, or which are provided in public schools throughout the state, or any other subjects that are taught in public schools.

Section 16-51-3. Eligibility for salary supplement.--Every nonpublic schoolteacher shall, upon his or her request, be paid by the state through the commissioner of education, a salary supplement in the amount fixed by law in such installments and at such intervals as shall be fixed by regulation promulgated by the commissioner of education. As a condition for the payment of such salary supplement the commissioner of education shall be satisfied that the teacher:

1. Is one who teaches in any grade from grade one through grade eight exclusively only those subjects required to be taught by state law to the same extent as those subjects are taught in public schools, or which are provided in public schools throughout the state, or any other subjects that are taught in public schools.

2. Has a teaching certificate issued by or under the authority of the state board of education in substantially the same manner that such certificates are issued to teachers in public schools.

3. Is receiving a salary which, including the salary supplement, meets the minimum salary standards for public schools required for eligibility under title 16, chapter 7 of the general laws of Rhode Island.

4. Is using only teaching materials which are used in the public schools of the state.

5. Is one who does not teach a course in religion and who signs a statement in which he or she promises not to teach a course in religion for so long as or during such time as he or she receives any salary

supplements provided for under the provisions of this chapter.

Section 16-51-4. Amount of supplement--How determined.--The amount of salary supplement to be paid to an eligible nonpublic schoolteacher shall be fifteen per cent (15%) of his or her current salary, which salary, including the salary supplement, is not in excess of the average maximum salary paid to public school teachers in this state as determined by the commissioner of education.

Section 16-51-5. Regulation by commissioner of education.--It shall be the duty of the commissioner of education to promulgate regulations for the purpose of carrying out the provisions of this chapter. Such regulations shall include rules and procedures for making payments of salary supplements to eligible teachers; said regulations however must provide that said payments be made by the state directly to the teacher and not through the agency of the nonpublic school in which the teacher is employed. Such regulations shall also insure that the teacher is receiving the minimum salary provided for in section 16-51-3, and to that end the financial records of the nonpublic school pertaining thereto shall be subject to auditing by the state department of education. Such regulations shall also insure that any nonpublic school, as that term is defined earlier in this chapter, which employs teachers who receive salary supplements as provided for in this chapter shall comply with the provisions contained in title VI of the civil rights act of 1964.

Section 16-51-6. Commission to study aid to nonpublic schools.--There is hereby created a commission to consist of nine (9) members to be appointed by the governor, one of whom shall be designated by the governor as

chairman. The commission is to study and evaluate state aid to nonpublic schools and is to report its findings and recommendations to the governor before January 1, 1970.

Section 16-51-7. Annual appropriations--Disbursements.--There is hereby appropriated out of any funds in the general treasury not otherwise appropriated the sum of three hundred seventy-five thousand dollars (\$375,000), for the purpose of carrying out the provisions of this chapter; and the state controller is hereby authorized and directed to draw his orders upon the general treasurer for the payment of such sums, or so much thereof, as may from time to time be required within the amount appropriated, upon receipt by him of proper vouchers approved by the department of education.

Section 16-51-8. Severability.--If any clause, sentence, paragraph, or part of this chapter of the application thereof to any person or circumstance, shall, for any reason, be adjudged by a court of competent jurisdiction to be invalid or void, such judgment shall not affect, impair, or invalidate the remainder of this chapter or its application to other persons or circumstances.

Section 16-51-9. Liberal construction of act required.--This chapter shall be construed liberally in aid of its declared purposes.

#### Transportation

Section 16-21-2. Transportation to private schools.--The school committee of any town shall provide for pupils attending private schools of elementary and high school grades, except such schools as are operated for profit, the same rights and privileges as to transportation to and from

schools as are provided for pupils attending public schools.

#### Loan of textbooks

Section 16-23-2. The school committee of every community as the same is defined in section 16-7-16 shall furnish upon request at the expense of such community, textbooks in the fields of mathematics, science and modern foreign languages appearing on the published list of textbooks recommended by the commissioner of education as provided in section 16-1-9 of the general laws, as herein amended, to all pupils of elementary and secondary school grades resident in such community, said textbooks to be loaned to such pupils free of charge, subject to such rules and regulations as to care and custody as the school committee may prescribe.

Every such school committee shall also furnish at the expense of such community all other textbooks and school supplies used in the public schools of said community, said other textbooks and supplies to be loaned to the pupils of said public schools free of charge, subject to such rules and regulations as to care and custody as the school committee may prescribe. School books removed from school use may be distributed to pupils, and any textbook may become the property of a pupil who has completed the use of it in school, subject to rules and regulations prescribed by the school committee.

#### Lunches

Section 16-8-7. School lunch programs--Definition of terms.--For the purposes of sections 16-8-7 to 16-8-13, inclusive:

The term "school board" shall include city or town school committees or any person or group responsible for the operation of a private or a parochial school.



The term "school" shall be construed to mean any educational institution operated on a nonprofit basis, having a graded course of instruction with prescribed standards for the completion of each grade, with compulsory class attendance, and records of class work regularly maintained.

Section 16-8-8. Acceptance and use of federal school lunch funds.--The state department of education is hereby authorized to accept and direct the disbursement of funds appropriated by any act of congress and apportioned to the state in connection with the establishment and maintenance of school lunch programs. The state department of education shall deposit all such funds received from the federal government with the general treasurer, to be placed in a special account, and drawn upon only on receipt of properly authenticated vouchers signed by the department of education.

Section 16-8-9. Administration of school lunch program.--The state department of education may enter into such agreements, with any agency of the federal government, with any school board, or with any other agency or person, may prescribe such regulations, employ such personnel, and take such action, as it may deem necessary to provide for the establishment, maintenance, operation and expansion of any school lunch program, and to direct the disbursement of federal and state funds in accordance with existing provisions of the federal and state laws. The state department of education may give technical advice and assistance to any school board in connection with the establishment and operation of any school lunch program and may assist in training personnel engaged in the operation of such programs. The state department of education may accept any gift for

use in connection with any school lunch program.

Section 16-8-10. Locally managed lunch programs.--School boards may operate locally managed school lunch programs as part of the regular plan of local school administration and may use therefor funds disbursed under the terms of sections 16-8-7 to 16-8-13, inclusive, in addition to gifts and any other funds received from sale of school lunches under such a program.

Shared-time

Section 16-7-22. Determination of average daily membership.--On or before September 1 of each year (a) the average daily membership of each city and town for the reference year shall be determined by the commissioner of education, from data supplied by the school committee in each community in the following manner: The aggregate number of days of membership of all pupils enrolled in grades one (1) to twelve (12), both inclusive, increased by one-half ( $\frac{1}{2}$ ) the aggregate number of days of membership of all pupils in kindergarten, in all public schools in each city and town in the reference year (i) increased by the aggregate number of days of membership of pupils residing in the particular city or town whose tuition in schools approved by the department of education is paid by the particular city or town and (ii) decreased by the aggregate number of days of membership of nonresident pupils enrolled in the public schools of the particular city or town and (iii) decreased further, in the case of a city or town which is a member of a regional school district during the first year of operation of such regional school district, by the aggregate number of days of membership of pupils residing in the city or town who would have attended the public schools in such regional school district

if such regional school district had been operating during the previous year, shall be divided by the number of days during which such schools were officially in session during such reference year. The resulting figures shall be the average daily membership for such city or town for the reference year; and

(b) In the case of regional school districts the aggregate number of days of membership by which each city or town is decreased in (iii) above divided by the number of days during which the schools attended by such pupils were officially in session shall determine the average daily membership for such regional school district during the first year of operation. After the first year of operation, the average daily membership of each regional school district shall be determined by the commissioner of education, from data supplied by the school committee of each regional school district for the reference year in the manner provided in paragraph (a) above.

...SOUTH CAROLINA...

...SOUTH DAKOTA...

#### Driver Education

Section 32-5-50. Dealers participating in driver education program--Application to commissioner of motor vehicles--Fee.--Any motor vehicle dealer licensed under the provisions of chapter 32-6 who participates in the driver education program in the schools of the state by furnishing any school or schools with a motor vehicle used in such program, shall upon application to the commissioner of motor vehicles and payment of a fee of one dollar, receive from said commissioner of motor vehicles a public school corporation license plate for the operation of such vehicle

upon the highways of the state.

...TENNESSEE...

...TEXAS...

...UTAH...

#### Driver Education

Section 53-14-13.5. Enrollment of private school pupils in driver education classes.--Local school districts maintaining automobile driver education classes shall allow pupils enrolled in grades nine to twelve, inclusive, of regularly established private schools located in said school district to enroll in the most accessible public school in said school district for the purpose of receiving driver education. The enrollment of such pupils of regularly established private schools shall be on the same terms and conditions as applies to the pupils of public schools within said school district, as such terms and conditions relate to the driver education classes only.

...VERMONT...

#### Driver Education

Section 1045. Driver training course. A driver education and training course, approved by the department of education and the department of motor vehicles and consisting of at least thirty hours of classroom instruction and at least six hours of behind the wheel instruction, shall be made available to pupils whose parent or guardian is a resident of Vermont and who have reached their fifteenth birthday and who are regularly enrolled in a public or private high school approved by the state board.

Student tuition

Section 823. Elementary tuition. Tuition for elementary pupils shall be paid by the district in which the pupil is a resident. The tuition paid shall be at a rate not greater than the calculated net cost per elementary pupil in average daily membership in the receiving school district for the year of attendance.

Section 824. High school tuition. (a) Tuition for high school pupils shall be paid by the school district in which the pupil is a resident. The district shall pay the full tuition charged its pupils attending an approved public high school in Vermont or an adjoining state; or for its pupils enrolled in a private school which has been approved by the Vermont state board or by comparable authority, an amount not to exceed the average announced tuition of Vermont union high schools for the year of attendance.

(b) A Vermont public high school shall establish a rate of tuition which is not in excess of the calculated net cost per pupil for a year of attendance at such school.

...VIRGINIA...

...WASHINGTON...

Shared-time

Chapter 217, Laws of Washington, 1969, first extra session. New Section. Section 4. There is added to chapter 28A.41 RCW a new section to read as follows:

(1) For purposes of this section, the following definitions shall apply:

(a) "private school student" shall mean any student enrolled full

time in a private or private sectarian school;

(b) "school" shall mean any primary, secondary or vocational school;

(c) "school funding authority" shall mean any nonfederal governmental authority which provides money to common schools;

(d) "part time student" shall mean and include any student enrolled in a course of instruction in a private or private sectarian school and taking courses at any public school not available in such private or private sectarian school and any student involved in any work training program and taking courses in any public school, which work training program is approved by the school board of the district in which such school is located.

(2) The board of directors of any school district are authorized and may permit the enrollment of any part time students, including the part time enrollment of students involved in any work training program and desirous of taking courses within the district upon the school board's approval of any such work training program and the part time enrollment of any private school student in any school within the district for the purpose of attending a class or classes or a course of instruction if the class, classes, or course of instruction for which the private school student requests enrollment, are unavailable to the student in the private school in which the student is regularly enrolled: PROVIDED, This section shall only apply to private school students who would be otherwise eligible for full time enrollment in the public schools.

(3) The superintendent of public instruction shall recognize the costs to each school district occasioned by enrollment of part time students authorized by subsection (2) and shall include such costs in

the "weighting schedule" established pursuant to RCW 28.41.140. Each school district shall be reimbursed for the costs or a portion thereof, occasioned by attendance of part time students on a part time basis, by the superintendent of public instruction, according to law.

(4) Each school funding authority shall recognize the costs occasioned to each school district by enrollment of part time students authorized by subsection (2), and shall include said costs in funding the activities of said school districts.

(5) The superintendent of public instruction is authorized to adopt rules and regulations to carry out the purposes of this 1969 amendatory act.

...WEST VIRGINIA...

#### Textbooks

Section 18-5-21b. Textbooks may be furnished to pupils in private schools whose parents are unable to provide same.

The board of education of every county, upon application of the proper authorities of any private school, may likewise provide state-adopted textbooks for use of the pupils enrolled therein whose parents, in the judgment of the board, are unable to provide same.

#### Transportation

Section 18-15-13. Authority of boards. The boards, subject to the provisions of this chapter and the rules and regulations of the State board, shall have authority:

(6) To provide at public expense adequate means of transportation for all children of school age who live more than two miles distant from

school by the nearest available road or path; and to provide at public expense and according to such regulations as the board may establish, adequate means of transportation for school children participating in athletic, literary or music activities: Provided, that in all cases the buses or other transportation facilities owned by the board of education shall be driven or operated only by drivers regularly employed by the board of education: Provided, however, that buses shall be used for extra-curricular activities as herein provided only when the insurance provided for by this section shall have been effected....

...WISCONSIN...

#### Driver Education

Chapter 55, section 79.121.15, 1969 Laws of Wisconsin. State Aid For Driver Education Programs. To promote a uniformly effective driver education program among high school and vocational, technical and adult education school pupils, each school district operating high school grades and each school of vocational, technical and adult education shall receive \$30 for each pupil of high school age who successfully completes a course in driver education approved by the state superintendent, but in no case may the state aid exceed the actual cost of instruction. If the appropriation under section 20.255 (2) (v) is inadequate in any year to provide \$30 per pupil, the state aid shall be prorated after the appropriation for administration is deducted. Such state aid shall be paid at the same time as the state aid under sessions 121.08 to 121.13 is paid.

#### Transportation

Section 40.53. (1) School children. Except as provided in section



40.55, the school boards of all school districts shall provide transportation only to and from the public school which they are entitled to attend, for all pupils, attending public and nonpublic schools, residing in the district, on regular routes approved for the public school bus and 2 miles or more from the nearest public school they may attend within said district. Such school boards may provide transportation for teachers to and from school subject to the same controls and limitations as are provided by this section for the transportation of pupils. In districts operating high schools, the board may also provide transportation for non-resident public high school pupils residing 2 miles or more from the school within areas served by the school by bus routes approved by the county school committee and the state superintendent. If the district operating the high school does not provide transportation for nonresident high school pupils, the municipality in which the nonresident pupils reside shall arrange for such transportation and such municipality shall make claim to the county clerk for the cost of transportation so provided in the manner specified in section 40.56 (2). The annual or special school meeting of any school district, or if no such meeting is held, then the school board of any such district may authorize the transportation of all or any part of the pupils of such school district to and from the public school within the district which they are entitled to attend, but if such transportation is furnished to less than all of the pupils there shall be reasonable uniformity in the minimum distance that pupils will be transported. The board of any public elementary school district which has suspended school shall provide transportation to and from school for all elementary pupils residing therein, and 2 miles or more from the nearest district school which they may attend, or 2 miles or more from any other

district school which in the opinion of the state department of public instruction it is more feasible for them to attend.

...WYOMING...

## APPENDIX D

### CHAPTER V

MEMORIAL AND REMONSTRANCE  
AGAINST RELIGIOUS ASSESSMENTS

To The Honorable The General Assembly of  
The Commonwealth of Virginia.  
A Memorial and Remonstrance.

We, the subscribers, citizens of the said Commonwealth, having taken into serious consideration, a Bill printed by order of the last Session of General Assembly, entitled "A Bill establishing a provision for Teachers of the Christian Religion," and conceiving that the same, if finally armed with the sanctions of a law, will be a dangerous abuse of power, are bound as faithful members of a free State, to remonstrate against it, and to declare the reasons by which we are determined. We remonstrate against the said Bill,

1. Because we hold it for a fundamental and undeniable truth, "that Religion or the duty which we owe to our Creator and the Manner of discharging it, can be directed only by reason and conviction, not by force or violence." The Religion then of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate. This right is in its nature an unalienable right. It is unalienable; because the opinions of men, depending only on the evidence contemplated by their own minds, cannot follow the dictates of other men: It is unalienable also; because what is here a right towards men, is a duty towards the Creator. It is the duty of every man to render to the Creator such homage, and such only, as he believes to be acceptable to him. This duty is precedent both in order of time and degree of obligation, to the claims of Civil Society. Before any

can be considered as a member of Civil Society, he must be considered as a subject of the Governor of the Universe: And if a member of Civil Society, who enters into any subordinate Association, must always do it with a reservation of his duty to the general authority; much more must every man who becomes a member of any particular Civil Society, do it with a saving of his allegiance to the Universal Sovereign. We maintain therefore that in matters of Religion, no man's right is abridged by the institution of Civil Society, and that Religion is wholly exempt from its cognizance. True it is, that no other rule exists, by which any question which may divide a Society, can be ultimately determined, but the will of the majority; but it is also true, that the majority may trespass on the rights of the minority.

2. Because if religion be exempt from the authority of the Society at large, still less can it be subject to that of the Legislative Body. The latter are but the creatures and vicegerents of the former. Their jurisdiction is both derivative and limited: it is limited with regard to the co-ordinate departments, more necessarily is it limited with regard to the constituents. The preservation of a free government requires not merely, that the metes and bounds which separate each department of power may be invariably maintained; but more especially, that neither of them be suffered to overleap the great Barrier which defends the rights of the people. The Rulers who are guilty of such an encroachment, exceed the commission from which they derive their authority, and are Tyrants. The People who submit to it are governed by laws made neither by themselves, nor by an authority derived from them, and are slaves.

3. Because, it is proper to take alarm at the first experiment on

our liberties. We hold this prudent jealousy to be the first duty of citizens, and one of (the) noblest characteristics of the late Revolution. The freemen of America did not wait till usurped power had strengthened itself by exercise, and entangled the question in precedents. They saw all the consequences in the principle, and they avoided the consequences by denying the principle. We revere this lesson too much, soon to forget it. Who does not see that the same authority which can establish Christianity, in exclusion of all other Religions, may establish with the same ease any particular sect of Christians, in exclusion of all other Sects? That the same authority which can force a citizen to contribute three pence only of his property for the support of any one establishment, may force him to conform to any other establishment in all cases whatsoever?

4. Because, the bill violates that equality which ought to be the basis of every law, and which is more indispensable, in proportion as the validity or expediency of any law is more liable to be impeached. If "all men are by nature equally free and independent," all men are to be considered as entering into Society on equal conditions; as relinquishing no more, and therefore retaining no less, one than another, of their natural rights. Above all are they to be considered as retaining an "equal title to the free exercise of Religion according to the dictates of conscience." Whilst we assert for ourselves a freedom to embrace, to profess and to observe the Religion which we believe to be of divine origin, we cannot deny an equal freedom to those whose minds have not yet yielded to the evidence which has convinced us. If this freedom be abused, it is an offence against God, not against man: To God, therefore, not to men, must an account of it be rendered. As the Bill violates equality by

subjecting some to peculiar burdens; so it violates the same principle, by granting to others peculiar exemptions. Are the Quakers and Menonists the only sects who think a compulsive support of their religions unnecessary and unwarrantable? Can their piety alone be intrusted with the care of public worship? Ought their Religions to be endowed above all others, with extraordinary privileges, by which proselytes may be enticed from all others? We think too favorably of the justice and good sense of these denominations, to believe that they either covet pre-eminencies over their fellow citizens, or that they will be seduced by them, from the common opposition to the measure.

5. Because the bill implies either that the Civil Magistrate is a competent Judge of Religious truth; or that he may employ Religion as an engine of Civil policy. The first is an arrogant pretension falsified by the contradictory opinions of Rulers in all ages, and throughout the world: The second an unhallowed perversion of the means of salvation.

6. Because the establishment proposed by the Bill is not requisite for the support of the Christian Religion. To say that it is, is a contradiction to the Christian Religion itself; for every page of it disavows a dependence on the powers of this world: it is a contradiction to fact; for it is known that this Religion both existed and flourished, not only without the support of human laws, but in spite of every opposition from them; and not only during the period of miraculous aid, but long after it had been left to its own evidence, and the ordinary care of Providence: Nay, it is a contradiction in terms; for a Religion not invented by human policy, must have pre-existed and been supported, before it was established by human policy. It is moreover to weaken in those who profess this Religion

a pious confidence in its innate excellence, and the patronage of its Author; and to foster in those who still reject it, a suspicion that its friends are too conscious of its fallacies, to trust it to its own merits.

7. Because experience witnesseth that ecclesiastical establishments, instead of maintaining the purity and efficacy of Religion, have had a contrary operation. During almost fifteen centuries, has the legal establishment of Christianity been on trial. What have been its fruits? More or less in all places, pride and indolence in the Clergy; ignorance and servility in the laity; in both, superstition, bigotry, and persecution. Enquire of the Teachers of Christianity for the ages in which it appeared in its greatest lustre; those of every sect, point to the ages prior to its incorporation with Civil policy. Propose a restoration of this primitive state in which its Teachers depended on the voluntary rewards of their flocks; many of them predict its downfall. On which side ought their testimony to have greatest weight, when for or when against their interest?

8. Because the establishment in question is not necessary for the support of Civil Government. If it be urged as necessary for the support of Civil Government only as it is a means of supporting Religion, and it be not necessary for the latter purpose, it cannot be necessary for the former. If Religion be not within (the) cognizance of Civil Government, how can its legal establishment be said to be necessary to civil Government? What influence in fact have ecclesiastical establishments had on Civil Society? In some instances they have been seen to erect a spiritual tyranny on the ruins of Civil authority; in many instances they have been seen upholding the thrones of political tyranny; in no instance have they



been seen the guardians of the liberties of the people. Rulers who wished to subvert the public liberty, may have found an established clergy convenient auxiliaries. A just government, instituted to secure & perpetuate it, needs them not. Such a government will be best supported by protecting every citizen in the enjoyment of his Religion with the same equal hand which protects his person and his property; by neither invading the equal rights of any Sect, nor suffering any Sect to invade those of another.

9. Because the proposed establishment is a departure from that generous policy, which, offering an asylum to the persecuted and oppressed of every Nation and Religion, promised a lustre to our country, and an accession to the number of its citizens. What a melancholy mark is the Bill of sudden degeneracy? Instead of holding forth an asylum to the persecuted, it is itself a signal of persecution. It degrades from the equal rank of Citizens all those whose opinions in Religion do not bend to those of the Legislative authority. Distant as it may be, in its present form, from the Inquisition it differs from it only in degree. The one is the first step, the other the last in the career of intolerance. The magnanimous sufferer under this cruel scourge in foreign Regions, must view the Bill as a Beacon on our Coast, warning him to seek some other haven, where liberty and philanthropy in their due extent may offer a more certain repose from his troubles.

10. Because, it will have a like tendency to banish our Citizens. The allurements presented by other situations are every day thinning their number. To superadd a fresh motive to emigration, by revoking the liberty which they now enjoy, would be the same species of folly which has dishonoured and depopulated flourishing kingdoms.

11. Because, it will destroy that moderation and harmony which the forbearance of our laws to intermeddle with Religion, has produced amongst its several sects. Torrents of blood have been spilt in the old world, by vain attempts of the secular arm to extinguish Religious discord, by proscribing all difference in Religious opinions. Time has at length revealed the true remedy. Every relaxation of narrow and rigorous policy, wherever it has been tried, has been found to assuage the disease. The American Theatre has exhibited proofs, that equal and compleat liberty, if it does not wholly eradicate it sufficiently destroys its malignant influence on the health and prosperity of the State. If with the salutary effects of this system under our own eyes, we begin to contract the bonds of Religious freedom, we know no name that will too severely reproach our folly. At least let warning be taken at the first fruits of the threatened innovation. The very appearance of the Bill has transformed that "Christian forbearance, love and charity," which of late mutually prevailed, into animosities and jealousies, which may not soon be appeased. What mischiefs may not be dreaded should this enemy to the public quiet be armed with the force of a law?

12. Because, the policy of the bill is adverse to the diffusion of the light of Christianity. The first wish of those who enjoy this precious gift, ought to be that it may be imparted to the whole race of mankind. Compare the number of those who have as yet received it with the number still remaining under the dominion of false Religions; and how small is the former! Does the policy of the Bill tend to lessen the disproportion? No; it at once discourages those who are strangers to the light of (revelation) from coming into the Region of it; and countenances, by

example the nations who continue in darkness, in shutting out those who might convey it to them. Instead of levelling as far as possible, every obstacle to the victorious progress of truth, the Bill with an ignoble and unchristian timidity would circumscribe it, with a wall of defence, against the encroachments of error.

13. Because attempts to enforce by legal sanctions, acts obnoxious to so great a proportion of Citizens, tend to enervate the laws in general, and to slacken the bands of Society. If it be difficult to execute any law which is not generally deemed necessary or salutary, what must be the case where it is deemed invalid and dangerous? and (sic) what may be the effect of so striking an example of impotency in the Government, on its general authority.

14. Because a measure of such singular magnitude and delicacy ought not to be imposed, without the clearest evidence that it is called for by a majority of citizens: and no satisfactory method is yet proposed by which the voice of the majority in this case may be determined, or its influence secured. "The people of the respective counties are indeed requested to signify their opinion respecting the adoption of the Bill to the next Session of Assembly." But the representation must be made equal, before the voice either of the Representatives or of the Counties, will be that of the people. Our hope is that neither of the former will, after due consideration, espouse the dangerous principle of the Bill. Should the event disappoint us, it will still leave us in full confidence, that a fair appeal to the latter will reverse the sentence against our liberties.

15. Because, finally, "the equal right of every citizen to the free exercise of his Religion according to the dictates of conscience" is held by the same tenure with all our other rights. If we recur to its origin, it is equally the gift of nature; if we weigh its importance, it cannot be less dear to us; if we consult the Declaration of those rights which pertain to the good people of Virginia, as the "basis and foundation of government," it is enumerated with equal solemnity, or rather studied emphasis.

Either then, we must say, that the will of the Legislature is the only measure of their authority; and that in the plenitude of this authority, they may sweep away all our fundamental rights; or, that they are bound to leave this particular right untouched and sacred: Either we must say, that they may controul the freedom of the press, may abolish the trial by jury, may swallow up the Executive and Judiciary Powers of the State; nay that they may despoil us of our very right of suffrage, and erect themselves into an independent and hereditary assembly: or we must say, that they have no authority to enact into law the Bill under consideration. We the subscribers say, that the General Assembly of this Commonwealth have no such authority: And that no effort may be omitted on our part against so dangerous an usurpation, we oppose to it, this remonstrance; earnestly praying, as we are in duty bound, that the Supreme Lawgiver of the Universe, by illuminating those to whom it is addressed, may on the one hand, turn their councils from every act which would affront his holy prerogative, or violate the trust committed to them: and on the other, guide them into every measure which may be worthy of his (blessing, may re)dound to their own praise, and may establish more firmly the liberties, the prosperity, and the Happiness of the Commonwealth.

BILL FOR ESTABLISHING  
RELIGIOUS FREEDOM

I. WHEREAS Almighty God hath created the mind free; that all attempts to influence it by temporal punishments or burthens, or by civil incapacitations, tend only to beget habits of hypocrisy and meanness, and are a departure from the plan of the Holy author of our religion, who being Lord both of body and mind, yet chose not to propagate it by coercions on either as was in his Almighty power to do; that the impious presumption of legislators and rulers civil as well as ecclesiastical, who being themselves but fallible and uninspired men, have assumed dominion over the faith of others setting up their own opinions and modes of thinking as the only true and infallible, and as such endeavouring to impose them on others, hath established and maintained false religions over the greatest part of the world, and through all time; that to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical; that even the forcing him to support this or that teacher of his own religious persuasion, is depriving him of the comfortable liberty of giving his contributions to the particular pastor, whose morals he would make his pattern, and whose powers he feels most persuasive to righteousness, and is withdrawing from the ministry those temporary rewards, which proceeding from an approbation of their personal conduct, are an additional incitement to earnest and unremitting labours for the instruction of mankind; that our civil rights have no dependence on our religious opinions, any more than our opinions in physics or geometry; that therefore the proscribing any citizen as unworthy the public confidence by laying upon him an incapacity of being called to

offices of trust and emolument, unless he profess or renounce this or that religious opinion, is depriving him injuriously of those privileges and advantages to which in common with his fellow-citizens he has a natural right; that it tends only to corrupt the principles of that religion it is meant to encourage, by bribing with a monopoly of worldly honours and emoluments, those who will externally profess and conform to it; that though indeed these are criminal who do not withstand such temptation, yet neither are those innocent who lay the bait in their way; that to suffer the civil magistrate to intrude his powers into the field of opinion, and to restrain the profession or propagation of principles on supposition of their ill tendency, is a dangerous fallacy, which at once destroys all religious liberty, because he being of course judge of that tendency will make his opinions the rule of judgment, and approve or condemn the sentiments of others only as they shall square with or differ from his own; that it is time enough for the rightful purposes of civil government, for its officers to interfere when principles break out into overt acts against peace and good order; and finally, that truth is great and will prevail if left to herself, that she is the proper and sufficient antagonist to error, and has nothing to fear from the conflict, unless by human interposition disarmed of her natural weapons, free argument and debate, errors ceasing to be dangerous when it is permitted freely to contradict them:

II. Be it enacted by the General Assembly, That no man shall be compelled to frequent or support any religious worship, place or ministry whatsoever, nor shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer on account of his religious

opinions or belief; but that all men shall be free to profess, and by argument to maintain, their opinions in matters of religion, and that the same shall in no wise diminish, enlarge, or affect their civil capacities.

III. And though we well know that this Assembly, elected by the people for the ordinary purposes of legislation only, have no power to restrain the acts of succeeding Assemblies, constituted with powers equal to our own, and that therefore to declare this act to be irrevocable would be of no effect in law; yet we are free to declare, and do declare, that the rights hereby asserted are of the natural rights of mankind, and that if any act shall be hereafter passed to repeal the present, or to narrow its operation, such act will be an infringement of natural right.